

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re

4 Orly Genger,

Chapter 7

CASE NO. 19-13895 (JLG)

5 Debtor.

6
7 ORAL DEPOSITION OF MICHAEL OLDNER

8 June 25, 2020

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1 ANSWERS AND DEPOSITION OF MICHAEL OLDNER, a
2 witness produced at the request of the Creditors, was
3 taken by Zoom in the above-styled and numbered cause
4 on the 25th day of June, 2020, before Janess Ferguson
5 Smith, Certified Court Reporter and Notary Public in
6 and for Saline County, Arkansas, at the Law Offices
7 of Gary Green, 1001 LaHarpe Boulevard, Little Rock,
8 Arkansas, at 9:01 a.m.

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09:03:17 1 MR. POLLOCK: So before we begin, Tim,
09:03:21 2 did you want to say something?

09:03:24 3 MR. CULLEN: Sure. I'm Tim Cullen. I
09:03:26 4 represent Mr. Oldner in his personal
09:03:29 5 capacity.

09:03:29 6 To the extent that he is here
09:03:31 7 responsive to a subpoena in his individual
09:03:34 8 capacity, we are not waiving any of the
09:03:37 9 objections previously made to that in the
09:03:39 10 bankruptcy court or in the Motion to Quash
09:03:43 11 filed in Arkansas.

09:03:45 12 Mr. Oldner has no knowledge in his
09:03:48 13 individual capacity, so it's our position
09:03:51 14 that all questions should be limited to him
09:03:51 15 in his capacity as trustee.

09:03:53 16 We further understand that this
09:03:56 17 deposition by agreement and by order of the
09:03:58 18 bankruptcy court will be limited to topics
09:04:01 19 related to the Motion to Dismiss in the
09:04:04 20 bankruptcy filed by Sagi Genger, to which
09:04:09 21 Mr. Oldner nor the trust are parties.
09:04:12 22 They've not joined that motion.

09:04:15 23 MR. POLLOCK: And Adam Pollock on
09:04:18 24 behalf of Mr. Oldner in his capacity as
09:04:21 25 trustee. We represent the Orly Genger

09:04:24 1 Trust.

09:04:25 2 I join in what Mr. Cullen said. We
09:04:27 3 are here in an effort to, in a good faith
09:04:32 4 effort here.

09:04:33 5 As I mentioned when I spoke with
09:04:35 6 everybody last week, we do -- we appear
09:04:39 7 without prejudice and without waiver of the
09:04:42 8 pending Motion to Quash.

09:04:44 9 I trust that consistent with the
09:04:47 10 judge's direction on the teleconference
09:04:50 11 that was on Tuesday we will be able to have
09:04:52 12 a successful deposition and hopefully avoid
09:04:57 13 further motion practice on that matter.

09:05:09 14 MR. BOWEN: Well, let's go on the
09:05:10 15 record and swear in the witness, please.

09:05:11 16 MICHAEL OLDNER,
09:05:11 17 the witness hereinbefore named, having first been
09:05:11 18 duly cautioned and sworn or affirmed to tell the
09:05:11 19 truth, the whole truth and nothing but the truth,
09:05:11 20 testified as follows:

09:05:23 21 MR. BOWEN: As I stated off the
09:05:25 22 record, my name is Michael Bowen,
09:05:27 23 B-o-w-e-n. I'm a lawyer from the law firm
09:05:29 24 Kasowitz Benson Torres, a creditor in this
09:05:33 25 bankruptcy, and I'll be asking you

09:05:35 1 questions to begin.

09:05:38 2 Can, can we do a roll call of
09:05:40 3 everybody who is present at this meeting?

09:05:47 4 MR. POLLOCK: Good idea.

09:06:37 5 MR. GENDER: This is Sagi Gender. I'm
09:05:51 6 here on behalf of myself.

09:06:44 7 MR. GERON: This is Yann Geron. I
09:06:00 8 appear on behalf of Orly Gender.

09:06:51 9 MS. ABOULAFIA: Elizabeth Aboulafia,
09:06:51 10 with Cullen and Dykman. I'm consult to
09:06:51 11 Michael Oldner in his capacity as trustee
09:06:51 12 of the Orly Gender Trust.

09:06:57 13 MR. CAVALIERE: Rocco Cavaliere,
09:06:57 14 Tarter Krinsky and Drogin, on behalf of
09:06:21 15 Debra Piazza, the Chapter 7 Trustee.

09:07:06 16 MR. GARTMAN: Chris Gartman from
09:06:27 17 Hughes Hubbard and Reed, on behalf of
09:06:29 18 creditor ADBG LLC.

09:07:15 19 MR. KURLAND: I'm Andrew Kurland. I'm
09:06:36 20 with Kasowitz Benson Torres, as well as
09:06:38 21 Mike Bowen, and I'm here for creditor
09:06:42 22 Kasowitz Benson Torres.

09:06:47 23 MR. BOWEN: Okay. I'm informed that
09:06:49 24 Eric Herschmann, who's also a creditor in
09:06:52 25 his own right, will be joining at some

09:06:52 1 point, so let's begin.

09:06:52 2 EXAMINATION

09:06:52 3 BY MR. BOWEN:

09:06:58 4 Q. Mr. Oldner, the Orly Genger Trust is not
09:07:05 5 joining in Sagi Genger's motion to dismiss this
09:07:08 6 bankruptcy?

09:07:14 7 A. Is that a question?

09:07:17 8 Q. Yes.

09:07:18 9 A. No.

09:07:54 10 Q. The answer is the Orly Genger Trust is not
09:07:24 11 joining in the Motion to Dismiss?

09:07:26 12 A. The Orly Genger Trust is not joining in the
09:07:29 13 Motion to Dismiss.

09:08:08 14 Q. Your, your volume is a little low. I don't
09:07:34 15 know if anybody else is having a problem.

09:07:36 16 A. That is because we have tried to keep it from
09:07:40 17 having feedback. Can you hear me better now?

09:07:43 18 Q. Yes.

09:07:44 19 A. Okay. Thank you.

09:08:21 20 Q. The Orly Genger Trust did, however, join in a
09:07:50 21 prior motion by Sagi Genger to dismiss Orly Genger's
09:07:56 22 bankruptcy; correct?

09:07:57 23 A. Yes.

09:08:34 24 Q. Why is the Orly Genger Trust no longer joining
09:08:03 25 in the Motion to Dismiss?

09:08:07 1 A. That is a technical legal matter that I have
09:08:11 2 left up to attorneys.

09:08:49 3 Q. You claim to be the trustee of the Orly Genger
09:08:18 4 Trust; correct?

09:08:57 5 A. I am.

09:08:21 6 Q. You claim to be?

09:08:22 7 A. I am.

09:08:25 8 Q. Do you -- you're -- in your own mind you're
09:08:29 9 certain that you are the trustee of the Orly Genger
09:08:32 10 Trust?

09:08:34 11 MR. POLLOCK: Objection; asked and
09:08:35 12 answered.

09:08:36 13 Q. You can answer.

09:08:39 14 A. Yes.

09:09:17 15 Q. On what basis?

09:08:45 16 MR. POLLOCK: Objection; the basis for
09:08:47 17 which he is the trustee has nothing to do
09:08:50 18 with the Motion to Dismiss that was filed
09:08:53 19 by Sagi Genger.

09:09:29 20 Q. You can answer the question.

09:09:03 21 A. I'm sorry. After the back-and-forth, would you
09:09:06 22 please repeat the question?

09:09:35 23 Q. What is your basis for your belief that you are
09:09:12 24 the trustee for the Orly Genger Trust?

09:09:16 25 MR. POLLOCK: And I'll note my

09:09:17 1 objection on the same grounds.

09:09:18 2 A. I was appointed by the previous trustee. I
09:09:22 3 accepted the appointment.

09:09:25 4 Q. That's your only basis?

09:09:28 5 MR. POLLOCK: Mr. Bowen, I remind you
09:09:29 6 that the judge was pretty clear about what
09:09:32 7 we're doing a deposition on today.

09:09:35 8 He's answered the question. He
09:09:38 9 believes that he is lawfully appointed as
09:09:41 10 trustee. Move on.

09:10:22 11 Q. You can answer the question, please. The
09:09:48 12 question was is that your only basis for your belief
09:09:51 13 that you are the trustee of the Orly Genger Trust?

09:09:56 14 MR. POLLOCK: I will note the same
09:09:57 15 objection.

09:09:58 16 A. Yes.

09:10:36 17 Q. Who is the beneficiary of the Orly Genger 1993
09:10:06 18 Trust?

09:10:08 19 A. The beneficiaries are Orly Genger and her
09:10:11 20 descendants.

09:10:12 21 Q. Did you ever speak with Orly Genger?

09:10:21 22 MR. POLLOCK: Mr. Bowen, I have given
09:10:23 23 you leeway. I object to this entire line
09:10:25 24 of questioning. If you want to explain how
09:10:26 25 this is relevant to the pending Motion to

09:10:27 1 Dismiss, you can make a proffer as to that.

09:10:31 2 But I -- Judge Garrity was very clear
09:10:34 3 that we are doing a deposition today on the
09:10:36 4 Motion to Dismiss, which has nothing to do
09:10:39 5 with the Orly Genger 1993 Trust.

09:10:42 6 It has nothing to do with whether
09:10:43 7 Mr. Oldner was appointed as trustee,
09:10:46 8 whether he has spoken to Ms. Genger. You
09:10:50 9 are far afield, and I direct you to move
09:10:52 10 on.

09:10:56 11 MR. BOWEN: Please answer the
09:10:56 12 question.

09:10:59 13 MR. POLLOCK: Is this your last
09:11:01 14 question on this topic?

09:11:02 15 Q. Please answer the question. The question is
09:11:04 16 did you ever speak with Orly Genger?

09:11:07 17 MR. POLLOCK: This is the last
09:11:09 18 question, and then he'll answer, and you'll
09:11:11 19 move on.

09:11:45 20 A. No.

09:11:12 21 Q. Did you ever make any attempts to speak with
09:11:15 22 Orly Genger?

09:11:20 23 A. Through counsel.

09:11:52 24 Q. I'm sorry?

09:11:26 25 A. Yes.

09:11:28 1 Q. You answered "yes"?

09:11:29 2 A. Yes.

09:11:56 3 Q. What attempts did you make to speak with Orly
09:11:35 4 Genger?

09:11:36 5 MR. POLLOCK: Mr. Bowen, enough. We
09:11:38 6 have an order of direction from Judge
09:11:40 7 Garrity about the content of this motion
09:11:42 8 to, of this deposition that relates to the
09:11:43 9 Motion to Dismiss.

09:11:45 10 If you have a proffer as to whether he
09:11:47 11 is, when he made attempts to speak to Orly
09:11:50 12 as possibly relevant to the pending Motion
09:11:52 13 to Dismiss, you can let me know, and we
09:11:55 14 will address that.

09:11:58 15 Q. Please answer the question.

09:12:02 16 MR. POLLOCK: No.

09:12:03 17 MR. BOWEN: I'm sorry. Who said "no"?

09:12:05 18 MR. POLLOCK: I said that unless you
09:12:06 19 can make a proffer as to how this is
09:12:09 20 possibly relevant to the Motion to Dismiss,
09:12:10 21 we're going to move on in topics.

09:12:15 22 MR. BOWEN: I'm asking the witness to
09:12:16 23 answer the question.

09:12:18 24 MR. POLLOCK: Also, you're, you
09:12:19 25 represent a third party creditor, Kasowitz

09:12:20 1 Benson; correct?

09:12:25 2 BY MR. BOWEN:

09:12:25 3 Q. Mr. Oldner, please answer my question. What
09:12:27 4 efforts did you make to speak with Orly Genger?

09:12:31 5 MR. POLLOCK: Mr. Bowen, I'm
09:12:32 6 respectfully asking you, consistent with
09:12:35 7 Judge Garrity's direction, to move on.

09:13:03 8 MR. BOWEN: Please stop interfering
09:12:39 9 with my deposition and let the witness
09:12:41 10 answer the question.

09:12:42 11 You have interrupted every question I
09:12:44 12 have asked, and we're in the very
09:12:46 13 beginning. Let your witness answer these
09:12:48 14 questions, and we can -- you'll see why
09:12:50 15 it's relevant.

09:12:51 16 MR. POLLOCK: Mr. Bowen --

09:12:52 17 MR. BOWEN: You're way out of line.
09:12:53 18 That's not how depositions are conducted in
09:12:54 19 this jurisdiction in a federal court.

09:12:56 20 BY MR. BOWEN:

09:12:57 21 Q. Mr. Oldner, please answer my question.

09:12:59 22 MR. POLLOCK: Mr. Bowen, your raising
09:13:01 23 your voice at me is completely out of line.
09:13:04 24 I'm asking politely to make a proffer as to
09:13:07 25 why this is related to the Motion to

09:13:08 1 Dismiss, which was Judge Garrity's clear
09:13:12 2 direction on the conference call that we
09:13:13 3 had on Tuesday afternoon at 4:00 p.m.

09:13:51 4 MR. BOWEN: Your objection is on the
09:13:18 5 record.

09:13:19 6 BY MR. BOWEN:

09:13:20 7 Q. I'm asking Mr. Oldner, what efforts did you
09:13:22 8 make to contact Orly Genger?

09:13:32 9 A. May I answer the question now?

09:13:34 10 MR. POLLOCK: Sure, over my objection.

09:13:37 11 A. I made effort through my counsel.

09:13:41 12 MR. POLLOCK: All right. Mr. Bowen,
09:13:42 13 you got your answer.

09:13:44 14 Q. Describe what efforts you made through your
09:13:47 15 counsel.

09:14:13 16 A. I just told you.

09:13:48 17 Q. Well, I don't understand your answer. Please
09:13:50 18 describe what efforts you made through your counsel.

09:13:54 19 MR. POLLOCK: Mr. Bowen --

09:13:55 20 MR. GENDER: This is Sagi Genger. To
09:13:55 21 the extent that the answer requires an
09:13:59 22 invasion of our joint privilege, I request
09:14:01 23 that the privilege be respected and that it
09:14:01 24 not be answered.

09:14:02 25 MR. BOWEN: Mr. Genger, you're not

09:14:05 1 licensed to practice in this jurisdiction.

09:14:09 2 You're not allowed to interpose objections.

09:14:11 3 You need to be quiet. You have a

09:14:11 4 lawyer. Your lawyer can do it, so speak

09:14:13 5 with your lawyer.

09:14:13 6 MR. GINGER: I don't --

09:14:13 7 BY MR. BOWEN:

09:14:13 8 Q. Mr. Oldner, please answer the question.

09:14:13 9 MR. GINGER: I'm simply noting, I'm

09:14:13 10 simply noting for the record --

09:14:13 11 MR. BOWEN: Mr. Sagi -- Mr. Genger,

09:14:13 12 you are not allowed to speak in this

09:14:14 13 proceeding. You are not admitted in this

09:14:14 14 court --

09:14:14 15 MR. GINGER: I'm not --

09:14:14 16 MR. BOWEN: -- or in any jurisdiction,

09:14:14 17 as far as I know. You must desist. Talk

09:14:14 18 to your lawyer.

09:14:32 19 BY MR. BOWEN:

09:14:34 20 Q. Mr. Oldner, please answer the question.

09:14:37 21 MR. POLLOCK: Mr. Bowen, why don't --

09:14:37 22 if you want to know about his counsel, what

09:14:40 23 his counsel said or did, why don't you

09:14:43 24 ask -- don't -- enough of this talk.

09:14:48 25 Please restrict your questioning to the

09:14:50 1 pending Motion to Dismiss.

09:14:53 2 Q. Mr. Oldner, please answer the question.

09:14:56 3 MR. POLLOCK: He answered the
09:14:56 4 question, like, six times.

09:14:59 5 MR. BOWEN: Your objection is noted.

09:15:01 6 BY MR. BOWEN:

09:15:01 7 Q. Mr. Oldner, please answer the question. What
09:15:03 8 efforts did you make through your lawyer to contact
09:15:07 9 Orly Genger?

09:15:08 10 MR. POLLOCK: Mr. Bowen, where are you
09:15:10 11 going with this line of questioning?

09:15:12 12 Q. Please answer the question.

09:15:13 13 MR. POLLOCK: Mr. Bowen, we're going
09:15:14 14 to be here all day if you can't make a
09:15:17 15 proffer as to why this relates to the
09:15:18 16 Motion to Dismiss.

09:15:19 17 I'm asking you to give us a one
09:15:21 18 sentence proffer how this relates to the
09:15:24 19 Motion to Dismiss, respectful of the eight
09:15:27 20 different lawyers on the line and their
09:15:29 21 time.

09:15:31 22 MR. BOWEN: Mr. Pollock, you're
09:15:32 23 disrupting this deposition. I ask you to
09:15:34 24 stop. You may interpose objections by
09:15:34 25 simply saying "Objection," and then you

09:15:39 1 must stop.

09:15:40 2 BY MR. BOWEN:

09:15:40 3 Q. Mr. Oldner, please answer the question.

09:15:42 4 MR. POLLOCK: Mr. Bowen, we got a
09:15:43 5 clear direction from Judge Garrity. You
09:15:46 6 appear to be violating that clear
09:15:48 7 direction. I am asking you if you are not
09:15:50 8 violating it to please let me know how.

09:15:53 9 MR. BOWEN: Mr. Pollock, I'm not
09:15:54 10 discussing it with you. I'm conducting a
09:15:56 11 deposition. You can interpose an objection
09:15:58 12 by saying "objection," and that's it.

09:16:01 13 BY MR. BOWEN:

09:16:01 14 Q. Mr. Oldner, please answer the question.

09:16:04 15 MR. POLLOCK: Mr. Bowen, please move
09:16:05 16 on.

09:16:10 17 Q. Mr. Oldner, please answer the question.

09:16:14 18 MR. POLLOCK: It was asked and
09:16:15 19 answered several times. Please move on.

09:16:21 20 Q. I'm waiting for the answer to my question, and
09:16:23 21 the question was what efforts did you make through
09:16:26 22 counsel to contact Orly Genger?

09:16:38 23 A. I spoke with counsel and asked counsel to --

09:16:42 24 MR. POLLOCK: Hold on. Please do not
09:16:43 25 testify at to what you spoke with --

09:16:46 1 THE WITNESS: Thank you.

09:16:46 2 MR. POLLOCK: -- with respect to
09:16:47 3 counsel.

09:17:24 4 THE WITNESS: I contacted counsel.

09:16:49 5 BY MR. BOWEN:

09:17:25 6 Q. When?

09:16:54 7 A. Multiple times.

09:17:27 8 Q. What dates?

09:16:57 9 A. I don't remember.

09:16:59 10 Q. Generally?

09:17:00 11 A. Within the last year.

09:17:03 12 Q. When did you become trustee, to your
09:17:06 13 understanding?

09:17:08 14 A. I accepted the appointment as trustee on
09:17:11 15 June the 14th last year.

09:17:38 16 Q. When did you make efforts to contact Orly
09:17:17 17 Genger through counsel after that acceptance on
09:17:22 18 June 14th of last year?

09:17:24 19 MR. WILLIAMS: Objection; asked and
09:17:25 20 answered. Mr. Bowen, we are not going to
09:17:28 21 go further down this line unless you can
09:17:30 22 make a proffer as to how this is relevant.

09:17:33 23 We will direct him not to answer
09:17:34 24 further questions on this line of
09:17:36 25 questioning, and if you have difficulty

09:17:38 1 with that, I invite you to call Judge
09:17:38 2 Garrity and explain to him two things.

09:17:40 3 One is why this is relevant to the
09:17:43 4 Motion to Dismiss, and two is why you won't
09:17:47 5 tell anybody in this room why this is
09:17:49 6 possibly relevant to the Motion to Dismiss.

09:17:54 7 MR. BOWEN: Mr. Pollock, you are
09:17:54 8 obstructing this deposition.

09:17:56 9 BY MR. BOWEN:

09:17:56 10 Q. Mr. Oldner, please answer the question.

09:17:58 11 MR. POLLOCK: I am letting you know
09:18:00 12 that I'm directing him not to answer any
09:18:00 13 further questions until and unless we
09:18:02 14 understand how this is possibly relevant to
09:18:05 15 the Motion to Dismiss.

09:18:07 16 MR. BOWEN: You're concluding this
09:18:09 17 deposition?

09:18:09 18 MR. POLLOCK: No. I'm concluding this
09:18:11 19 line of questioning because you refuse to
09:18:14 20 let us know why this is relevant to this
09:18:16 21 Motion to Dismiss.

09:18:16 22 BY MR. BOWEN:

09:18:18 23 Q. Mr. Oldner, please answer the question.

09:18:23 24 MR. POLLOCK: Mr. Bowen, can you hear
09:18:24 25 me?

09:18:25 1 MR. BOWEN: I hear you, Mr. Pollock,
09:18:26 2 and I'm asking the witness. You can make
09:18:29 3 an objection, and then you must desist.
09:18:30 4 You have repeatedly flaunted that rule.

09:18:34 5 Please stop obstructing this
09:18:36 6 deposition. Please let the witness answer
09:18:38 7 the question. We've just begun.

09:18:39 8 BY MR. BOWEN:

09:18:39 9 Q. Mr. Oldner, please --

09:18:39 10 A. Mr. Bowen, I answered the question.

09:18:42 11 MR. POLLOCK: Mr. Bowen, I'm asking
09:18:44 12 you respectfully to let us know how your
09:18:46 13 line of questioning is consistent with
09:18:48 14 Judge Garrity's directions from the
09:18:50 15 conference on Tuesday at four p.m.

09:18:51 16 MR. BOWEN: Your objection is noted.

09:18:52 17 BY MR. BOWEN:

09:18:53 18 Q. Mr. Oldner, please answer the question.

09:18:55 19 MR. POLLOCK: Mr. Bowen, please move
09:18:57 20 on.

09:18:59 21 Q. You may answer the question, Mr. Oldner. The
09:19:02 22 objection is noted.

09:19:03 23 MR. POLLOCK: Does anybody else have
09:19:04 24 questions that are related to the Motion to
09:19:05 25 Dismiss, maybe Mr. Cavaliere, or Mr. Geron,

09:19:10 1 or Mr. Kurland?

09:19:11 2 MR. BOWEN: Mr. Pollock, I'm in the
09:19:13 3 middle of my examination. You must desist.
09:19:14 4 You are obstructing this deposition. I
09:19:17 5 don't understand what you think you're
09:19:18 6 doing, but you must stop.

09:19:20 7 BY MR. BOWEN:

09:19:20 8 Q. Mr. Oldner, please, please --

09:19:23 9 MR. POLLOCK: Mr. Bowen --

09:19:23 10 Q. -- please answer the question.

09:19:25 11 MR. POLLOCK: Mr. Bowen --

09:19:25 12 Q. It's a simple question. Let me start again.

09:19:28 13 I'll withdraw that question. My question is when you
09:19:30 14 said June 14th of last year, you meant June 14th,
09:19:34 15 2019; correct?

09:20:09 16 A. Yes, sir.

09:20:10 17 Q. Okay. In relation to June 14th, 2019, how soon
09:19:43 18 after that did you try and contact Orly Genger
09:19:47 19 through your lawyers?

09:19:49 20 A. I can't remember that specifically.

09:20:24 21 Q. I need you to speak up, please, sir.

09:19:53 22 A. I'm sorry. I cannot remember that
09:19:55 23 specifically.

09:19:57 24 Q. But was it before you accepted the position as
09:20:00 25 trustee, in your mind?

09:20:02 1 A. No.

09:20:42 2 Q. It was after?

09:20:05 3 A. Yes, sir.

09:20:07 4 Q. And when you say you made the attempt through
09:20:10 5 your lawyers, what lawyers are you talking about?

09:20:14 6 A. The lawyers that I hired.

09:20:53 7 Q. And which lawyer was that?

09:20:20 8 A. The last one was Adam Pollock.

09:20:24 9 Q. Well, I'm asking which lawyer you tried to
09:20:27 10 contact Orly Genger through.

09:20:30 11 A. Adam Pollock for sure.

09:20:33 12 Q. When did Adam Pollock become your lawyer, or
09:20:37 13 the Trustee's lawyer?

09:20:41 14 I'll withdraw that question. The question
09:20:43 15 is when did Adam Pollock become the lawyer for you in
09:20:47 16 your capacity as the trustee of the Orly Genger
09:20:50 17 Trust.

09:20:52 18 MR. POLLOCK: Mr. Bowen, I recommend
09:20:52 19 that you refer to the public record, a, and
09:20:56 20 b, that you make a proffer as to why this
09:20:59 21 is possibly relevant to the Motion to
09:21:00 22 Dismiss, or we will stop this line of
09:21:03 23 questioning, and you can call Judge Garrity
09:21:06 24 and ask him whether, and let him know why
09:21:10 25 this is possibly relevant to the pending

09:21:11 1 Motion to Dismiss, and why you will not
09:21:14 2 inform any of the -- it looks from Zoom,
09:21:17 3 like 12 people on this line -- why you are
09:21:20 4 expending time on when he became the
09:21:24 5 trustee and when he reached out to Orly
09:21:30 6 Genger through counsel.

09:21:33 7 MR. BOWEN: Mr. Pollock, again, you
09:21:35 8 are obstructing my deposition. Please, I'm
09:21:38 9 just asking the witness these questions.

09:21:40 10 You need to stop. You really -- the
09:21:43 11 record is going to reflect what you're
09:21:44 12 doing. I don't know why you're doing it,
09:21:47 13 but I need to ask you to stop.

09:21:48 14 BY MR. BOWEN:

09:21:48 15 Q. Mr. Oldner, please answer the question.

09:21:49 16 MR. CAVALIERE: If I could just
09:21:50 17 interject. It's Rocco Cavaliere, on behalf
09:21:50 18 of the Chapter 7 trustee.

09:21:50 19 I share in Mr. Bowen's concerns about
09:21:56 20 the interference in this deposition by Adam
09:21:56 21 Pollock, and I would appreciate limiting
09:22:00 22 those objections, if you could, or if
09:22:02 23 you're going to raise objections, raise
09:22:05 24 them for the record, and we can address
09:22:06 25 them with Judge Garrity at the appropriate

09:22:08 1 time.

09:22:09 2 I disagree with the characterization
09:22:11 3 made by Mr. Pollock as to any direction
09:22:13 4 made at the, at the conference that I was
09:22:15 5 at on Monday, or was it Tuesday, whenever
09:22:19 6 it was, and there is no order directing Mr.
09:22:21 7 Oldner to, to speak about any one, you
09:22:25 8 know, pre-approved questions that
09:22:29 9 Mr. Pollock has in connection with this
09:22:32 10 deposition.

09:22:32 11 And I think that all of these
09:22:34 12 questions are relevant to a determination
09:22:36 13 of, among other things, Mr. Oldner's
09:22:39 14 standing in this case; he filed a Proof of
09:22:39 15 Claim.

09:22:41 16 And I don't, frankly, need to list all
09:22:45 17 of the reasons why at this time. Your
09:22:46 18 objections are noted, Mr. Pollock, and we
09:22:48 19 would appreciate it if you desist and allow
09:22:51 20 Mr. Oldner to answer questions relating to
09:22:54 21 this, to the Motion to Dismiss and any
09:22:56 22 topic associated therewith.

09:22:59 23 MR. POLLOCK: I will respond to Mr.
09:22:59 24 Cavaliere, and then we'll move on. Thank
09:23:03 25 you, Mr. Cavaliere --

09:23:06 1 MR. BOWEN: Mr. -- I'm sorry,
09:23:07 2 Mr. Pollock, I'm going to ask you to
09:23:10 3 desist. You can respond off the record or
09:23:14 4 during a break.

09:23:15 5 I want to continue this deposition. I
09:23:17 6 am mindful of Mr. Oldner's time, and I'm
09:23:20 7 concerned that you're not acting like
09:23:21 8 you're mindful of Mr. Oldner's time.

09:23:25 9 BY MR. BOWEN:

09:23:25 10 Q. Mr. Oldner, please answer my question.

09:23:27 11 A. I can answer the question? Obviously, a great
09:23:39 12 deal has gone back and forth since you asked. I
09:23:43 13 apologize. Will you please ask again?

09:23:45 14 Q. The question, Mr. Oldner, is when did
09:23:48 15 Mr. Pollock become your lawyer in your capacity as
09:23:52 16 the trustee for the Orly Genger Trust.

09:23:56 17 A. In August of 2020.

09:24:01 18 Q. August of 2019?

09:24:02 19 A. 2019. I am terribly sorry.

09:24:41 20 Q. That's okay.

09:24:06 21 A. Last year.

09:24:42 22 Q. So other than trying to contact Orly Genger
09:24:14 23 through your lawyers, you have made no other efforts
09:24:18 24 to contact her; is that correct?

09:24:19 25 A. Yes, that is correct.

09:24:20 1 Q. And the only effort that you made through the
09:24:23 2 lawyers was through Mr. Pollock?

09:24:25 3 A. That is correct.

09:25:00 4 Q. And that had to be sometimes either in the
09:24:29 5 month of August 2019 or thereafter; is that correct?

09:24:35 6 A. Or both.

09:24:37 7 Q. Or both?

09:25:13 8 A. Or both.

09:24:41 9 Q. How many times did you try to contact Orly
09:24:43 10 Genger through Mr. Pollock?

09:24:46 11 A. More than once.

09:24:47 12 Q. How many?

09:24:50 13 A. More than once.

09:24:51 14 Q. You don't know -- other than saying "more than
09:24:53 15 once," you don't know how many?

09:24:55 16 A. No, I don't.

09:24:57 17 Q. What was your purpose in trying to contact Orly
09:24:59 18 Genger?

09:25:02 19 A. That was based on a discussion with counsel.

09:25:09 20 Q. Well, what was your understanding -- you don't
09:25:11 21 have to give me your conversation with counsel. What
09:25:13 22 was your understanding of your purpose in
09:25:14 23 directing --

09:25:15 24 MR. POLLOCK: Mr. Bowen --

09:25:15 25 Q. -- or trying to contact Orly Genger?

09:25:20 1 MR. POLLOCK: Mr. Bowen, I continue to
09:25:21 2 note my objection to this entire line of
09:25:23 3 questioning.

09:25:24 4 It has nothing to do with Mr. Oldner's
09:25:26 5 standing. It has nothing to do with the
09:25:27 6 Proof of Claim that was filed. It has
09:25:29 7 nothing to do with the Motion to Dismiss.
09:25:30 8 This entire line of questioning is
09:25:33 9 completely out of line, and I object to it.

09:26:10 10 MR. BOWEN: Once again, Mr. Pollock,
09:25:37 11 you're obstructing the deposition. I ask
09:25:39 12 you to desist. Just note your objection by
09:25:43 13 saying "objection," and that's it. That's
09:25:45 14 all the rules permit.

09:25:45 15 BY MR. BOWEN:

09:25:46 16 Q. Mr. Oldner, please answer the question.

09:25:49 17 A. Once again, please restate the question.

09:25:55 18 Q. The question is, leaving aside communications
09:25:58 19 with counsel -- I'm not asking for that -- but what
09:26:01 20 was your understanding of why you were trying to
09:26:05 21 contact Orly Genger?

09:26:09 22 A. I had not until that time spoken to Orly
09:26:12 23 Genger.

09:26:15 24 Q. Why did you want to speak to her?

09:26:21 25 MR. POLLOCK: I object on the same

09:26:22 1 grounds.

09:27:11 2 Q. You can answer, Mr. Oldner.

09:27:14 3 A. She is the majority -- she is the "of age"

09:26:40 4 beneficiary of the trust.

09:27:17 5 Q. And why did you want to speak to the "of age"

09:26:46 6 beneficiary of the trust?

09:26:47 7 A. I felt like it would be the right thing to do.

09:27:30 8 Q. Why?

09:26:54 9 MR. POLLOCK: I object to this entire

09:26:56 10 line of questioning.

09:27:01 11 Q. You can answer.

09:27:08 12 A. I think that is my answer. I felt like it

09:27:10 13 would be the right thing to do.

09:27:54 14 Q. Why, to your feeling, was it the right thing to

09:27:15 15 do?

09:27:15 16 MR. POLLOCK: Objection; asked and

09:27:16 17 answered.

09:28:00 18 Q. You can answer.

09:27:24 19 A. I believe I have answered. I felt that it was

09:27:28 20 the right thing to do.

09:28:07 21 Q. I understand your answer is that you felt it

09:27:32 22 was the right thing to do. Why was it the right

09:27:35 23 thing to do?

09:27:37 24 MR. POLLOCK: Objection; asked and

09:27:38 25 answered.

09:28:16 1 Q. You can answer.

09:27:53 2 A. I have answered that question. It's the result
09:27:56 3 of me feeling it was the right thing to do.

09:28:25 4 Q. My, my question is why did you have that
09:28:02 5 feeling?

09:28:03 6 MR. POLLOCK: Objection.

09:28:04 7 Q. What thought process did you go through to
09:28:08 8 conclude, This is the right thing to do?

09:28:11 9 MR. POLLOCK: Objection; asked and
09:28:13 10 answered.

09:28:13 11 Q. You can answer again. Don't, don't worry about
09:28:15 12 the objections. He's making objections for the
09:28:17 13 record. It doesn't stop you from answering the
09:28:19 14 question.

09:28:20 15 A. Thank you. I do not remember my thought
09:28:25 16 process at the time. I remember the conclusion of my
09:28:28 17 thought process, and that was that it was the right
09:28:30 18 thing to do. I contacted my counsel accordingly.

09:29:03 19 Q. What, to your understanding, what efforts were
09:28:42 20 made through your counsel to, to contact Orly? How
09:28:45 21 was that done?

09:28:46 22 MR. POLLOCK: Objection on the same
09:28:47 23 grounds. This is very far afield from the
09:28:49 24 topic at hand.

09:28:50 25 MR. BOWEN: Your speaking objections,

09:28:52 1 sir, are obstructionism. I am asking you
09:28:54 2 for the tenth, or eleventh, or twelfth time
09:28:57 3 to please desist.

09:28:58 4 MR. POLLOCK: And I'm asking you --
09:28:58 5 BY MR. BOWEN:

09:28:58 6 Q. Mr. Oldner, please answer the question.

09:29:27 7 MR. POLLOCK: And I'm asking you
09:29:01 8 respectfully, and I'm happy to go offline
09:29:02 9 and have a separate side discussion with
09:29:04 10 you, Mr. Bowen.

09:29:05 11 I'm asking respectfully for a proffer
09:29:08 12 as to how this is relevant to the pending
09:29:10 13 motion.

09:29:12 14 MR. BOWEN: That statement is
09:29:13 15 obstructionist. I'm asking you to desist.
09:29:14 16 Mr. Oldner, please answer the question.

09:29:17 17 MR. POLLOCK: So if it is helpful to
09:29:17 18 you, Mr. Bowen, why don't we go offline,
09:29:17 19 and we can have it off the record, that
09:29:21 20 discussion.

09:29:55 21 MR. BOWEN: It's not helpful to me.
09:29:25 22 It would be helpful to you if you desist in
09:29:28 23 obstructing this deposition.

09:29:29 24 BY MR. BOWEN:

09:29:29 25 Q. Mr. Oldner, please answer the question.

09:29:32 1 A. I hate to keep doing this, but would you please
09:29:34 2 ask the question again?

09:29:39 3 Q. The question is to your understanding what
09:29:43 4 efforts were made by counsel or anybody else to
09:29:47 5 contact Orly Genger?

09:29:50 6 MR. POLLOCK: Objection.

09:29:52 7 A. Those efforts were between me and counsel.

09:30:26 8 Q. Okay. And I'm not trying to invade that
09:29:57 9 privilege, so I'm not asking you for communications
09:30:00 10 with your counsel, but what was your understanding of
09:30:03 11 what efforts were made? Was it an email? Was it a
09:30:07 12 letter? Was it a phone call? What happened?

09:30:12 13 MR. POLLOCK: Objection.

09:30:13 14 A. I do not know the method that my counsel used
09:30:17 15 to contact.

09:30:21 16 Q. What was the response?

09:30:24 17 MR. POLLOCK: Objection.

09:30:24 18 Q. To your understanding?

09:30:26 19 A. To my understanding, Orly Genger did not want
09:30:31 20 to talk to me.

09:30:33 21 Q. And how -- what was -- let me ask it this way.
09:30:43 22 How many times was that effort made?

09:30:56 23 MR. POLLOCK: Objection; asked and
09:30:57 24 answered.

09:31:03 25 A. More than once.

09:31:04 1 Q. Just more than once?

09:31:05 2 A. More than once.

09:31:06 3 Q. That's all you can say about it?

09:31:07 4 A. That's enough.

09:31:08 5 Q. Did you -- and you never yourself just pick up

09:31:12 6 the phone to try and call Orly Genger directly;

09:31:16 7 correct?

09:31:17 8 MR. POLLOCK: Objection.

09:31:17 9 A. I did not.

09:31:18 10 Q. Have you served as a trustee before for any

09:31:20 11 kind of spendthrift trust?

09:31:20 12 MR. POLLOCK: Objection.

09:31:20 13 A. I have not.

09:31:20 14 Q. I'm sorry. I didn't hear you.

09:31:30 15 A. I'm sorry. Please let me know if you can't

09:31:32 16 hear me. I have not.

09:32:23 17 Q. Are you a lawyer?

09:31:37 18 A. I am not.

09:32:25 19 Q. What -- what's is your occupation?

09:31:42 20 A. I was a securities broker.

09:32:30 21 Q. Do you have any training in, in the law at all?

09:31:54 22 A. I do not.

09:32:35 23 Q. Do you have contacts in New York?

09:32:02 24 A. Pardon me?

09:32:03 25 Q. I'll change the question. Did you ever live in

09:32:08 1 New York?

09:32:09 2 A. I never did.

09:32:10 3 Q. Do you have business contacts in New York, New

09:32:13 4 York state?

09:32:46 5 A. I have had.

09:32:20 6 Q. So this --

09:32:20 7 A. Mr. Bowen, am I speaking --

09:32:23 8 Q. I'm sorry. I didn't hear you.

09:32:24 9 A. I'm sorry. That's what I was checking. Am I

09:32:27 10 speaking loudly enough?

09:32:29 11 Q. I can hear you. It would help me if you could

09:32:32 12 speak a little louder.

09:32:34 13 A. We're using a speakerphone that picks up

09:32:37 14 everybody to keep with the feedback. Please remind

09:32:40 15 me when I'm not speaking loudly enough. Sorry.

09:32:44 16 Q. No, I appreciate that.

09:32:44 17 A. Okay. Thank you.

09:32:44 18 Q. So just to make sure I understood your answer

09:32:44 19 to the last question, you in the past have had

09:32:54 20 business in New York, in the state of New York; is

09:32:57 21 that right?

09:33:36 22 A. Yes, sir.

09:33:37 23 Q. But you don't currently?

09:33:00 24 A. I do not.

09:33:41 25 Q. When was the last time you transacted any

09:33:05 1 business in, in New York?

09:33:07 2 A. 1997. Possibly 1998, but I believe it was
09:33:12 3 1997.

09:33:52 4 Q. And just to be clear about this, the only time
09:33:19 5 in your life that you served as a trustee for any
09:33:22 6 kind of trust is this one?

09:33:24 7 A. Yes, sir.

09:33:33 8 Q. What is your understanding of your duties and
09:33:36 9 obligations as the trustee of the Orly Genger Trust?

09:33:41 10 MR. POLLOCK: I am going to object.

09:33:42 11 Mr. Bowen, we raised the issue -- Mr. Labov
09:33:45 12 raised the issue and we raised the issue
09:33:50 13 directly with Ms. Garrity, Mr. Garrity,
09:33:52 14 Judge Garrity -- excuse me -- as to the
09:33:55 15 attempts, apparent attempts to seek
09:33:58 16 discovery on underlying claims.

09:34:01 17 Judge Garrity was clear that we are
09:34:03 18 not doing discovery at this time on
09:34:05 19 underlying claims.

09:34:06 20 And you -- and, furthermore, it
09:34:09 21 appears from the proposed 9019 motion that
09:34:13 22 your, that claims are being proposed to be
09:34:16 23 sold against Mr. Oldner, purportedly
09:34:20 24 related to his fiduciary duties.

09:34:23 25 At this time it appears that you are

09:34:24 1 seeking discovery with respect to his
09:34:26 2 fiduciary duties.

09:34:28 3 That is inappropriate, and that is
09:34:29 4 outside of the confines of what Judge
09:34:31 5 Garrity directed when we were on the phone
09:34:34 6 with him on Tuesday afternoon.

09:34:36 7 Also present is his personal counsel
09:34:38 8 who, I presume, shares similar concerns.
09:34:41 9 We will direct him not to answer with
09:34:44 10 respect to any discovery relating to the
09:34:48 11 proposed claims that are subject to the
09:34:52 12 pending motion to be sold.

09:34:59 13 MR. CULLEN: I will join in the
09:34:59 14 objection.

09:35:01 15 MR. BOWEN: Mr. Pollock, sir, I have
09:35:01 16 lost count of how many times I'm going to
09:35:01 17 ask you to stop obstructing the deposition.

09:35:03 18 BY MR. BOWEN:

09:35:04 19 Q. Mr. Oldner, please answer the question.

09:35:08 20 THE WITNESS: Mr. Cullen?

09:35:09 21 MR. CULLEN: This is Tim Cullen,
09:35:10 22 personal counsel for Mr. Oldner. And as I
09:35:13 23 stated initially, this deposition is
09:35:16 24 limited to the Motion to Dismiss.

09:35:20 25 It is not proper to try to take

09:35:22 1 discovery relating to Mr. Oldner's duties
09:35:26 2 or potential claims against him, and,
09:35:29 3 therefore, I join in Mr. Pollock's
09:35:32 4 objections.

09:35:33 5 BY MR. BOWEN:

09:36:07 6 Q. Subject to those objections, Mr. Oldner, please
09:35:40 7 answer the question?

09:35:41 8 A. I believe on advice of counsel I am not
09:35:44 9 answering that question.

09:36:15 10 Q. You refuse to answer the question?

09:35:51 11 A. On advice of counsel, I am not answering that
09:35:54 12 question.

09:36:21 13 Q. What's the question you are not answering?

09:35:58 14 MR. POLLOCK: Mr. Bowen, I
09:35:59 15 respectfully ask that you move on to the
09:36:03 16 topics at hand, or that you pass the seat,
09:36:06 17 as it were, to one of the other lawyers on
09:36:09 18 the line who seeks to ask questions
09:36:11 19 relating to the pending Motion to Dismiss.

09:36:41 20 MR. BOWEN: Mr. Pollock, please stop
09:36:14 21 obstructing this deposition.

09:36:15 22 BY MR. BOWEN:

09:36:15 23 Q. Mr. Oldner, please answer the question. Many
09:36:17 24 times you have forgotten the question. I want to
09:36:20 25 understand which question you are refusing to answer.

09:36:23 1 So please restate --

09:36:23 2 A. Please ask --

09:36:23 3 Q. -- the question you think --

09:36:25 4 A. -- the question again.

09:36:25 5 Q. -- you are refusing to answer.

09:36:26 6 A. Please ask the question again.

09:36:57 7 Q. Do, do you not remember the question?

09:36:32 8 A. I do not remember the question. Please ask the
09:36:34 9 question again.

09:37:03 10 Q. The question is what is your understanding of
09:36:39 11 your duties and obligations as the trustee of the
09:36:43 12 Orly Genger Trust?

09:36:46 13 MR. POLLOCK: Mr. Bowen --

09:36:47 14 A. On advice of counsel, I refuse to answer that
09:36:49 15 question.

09:36:49 16 MR. POLLOCK: Ms. Bowen, I would
09:36:50 17 respectfully ask that we go offline, and
09:36:52 18 you can explain to me, please, so that
09:36:54 19 we're not in the flow of the question, how
09:36:57 20 this relates to the Motion to Dismiss.

09:37:27 21 MR. BOWEN: Mr. Pollock, I'm
09:37:01 22 conducting a deposition. I have never
09:37:03 23 before encountered a lawyer who was as
09:37:05 24 obstructionist as you and who has
09:37:05 25 repeatedly tried to interfere with my line

09:37:09 1 of questioning. I ask you again, sir,
09:37:11 2 please stop.

09:37:12 3 BY MR. BOWEN:

09:37:12 4 Q. Mr. Oldner --

09:37:12 5 MR. POLLOCK: Mr. Bowen, I
09:37:13 6 respectfully ask --

09:37:14 7 Q. -- the question is as follows. Do you know
09:37:17 8 Dalia Genger?

09:37:21 9 MR. POLLOCK: Mr. Bowen, I
09:37:22 10 respectfully ask you not to raise your
09:37:24 11 voice at the witness.

09:37:25 12 MR. BOWEN: I'm not raising my voice,
09:37:27 13 sir. I'm raising my voice in frustration
09:37:29 14 to you, not to Mr. Oldner. Mr. Oldner has
09:37:31 15 been a perfect gentleman.

09:37:33 16 I'm asking you again, Mr. Pollock,
09:37:35 17 please stop interrupting my deposition and
09:37:37 18 disrupting and obstructing justice.

09:37:39 19 I don't -- I've never seen another
09:37:41 20 lawyer do this before. I'm just asking you
09:37:43 21 please, just please stop.

09:37:45 22 You can make whatever objection you
09:37:47 23 want by saying "Objection." If you want to
09:37:48 24 discuss it with me, I will decide when I am
09:37:52 25 at liberty to have a discussion with you.

09:37:54 1 I'm not going to do it in the middle
09:37:56 2 of my examination, so please stop, sir.

09:37:57 3 MR. POLLOCK: Mr. Bowen --

09:37:58 4 BY MR. BOWEN:

09:37:58 5 Q. Mr. Oldner, I'm sorry for these continued
09:38:02 6 interruptions, but I can't control Mr. Pollock. I'm
09:38:03 7 going to ask you again, do you know Dalia Genger?

09:38:06 8 MR. POLLOCK: Mr. Bowen, I ask you
09:38:08 9 respectfully to stop raising your voice at
09:38:08 10 me.

09:38:08 11 As you know, I have sought in the past
09:38:11 12 to understand the nature of this
09:38:13 13 deposition, and you indicated that you
09:38:15 14 would not, quote, waste your time, end
09:38:17 15 quote, on that.

09:38:18 16 I'm sorry that you're unable to spend
09:38:21 17 that time, but if you would proceed with
09:38:22 18 the question, I would respectfully ask that
09:38:25 19 it be related to the pending Motion to
09:38:26 20 Dismiss.

09:39:00 21 Q. Mr. Oldner, please answer the question.

09:38:39 22 A. Okay. I hate to do this. Please restate the
09:38:42 23 question. I'm not being a jerk.

09:38:46 24 Q. No, no, I don't -- I understand entirely.
09:38:48 25 Please, don't worry about that.

09:38:49 1 A. Thank you.

09:38:50 2 Q. And anytime you need me to restate something,
09:38:52 3 don't hesitate to ask.

09:38:54 4 A. Thank you.

09:38:54 5 Q. You know what, I'm going to withdraw that
09:38:56 6 question and ask you just some general questions.
09:38:57 7 Have you ever been deposed before?

09:38:59 8 A. Yes, sir.

09:39:00 9 Q. So you have been a witness in legal
09:39:02 10 proceedings?

09:39:03 11 A. Yes, sir.

09:39:04 12 Q. And has that ever been in court giving live
09:39:07 13 testimony, or only in depositions?

09:39:10 14 A. Both.

09:39:40 15 Q. So you know the general rules of a deposition;
09:39:14 16 correct?

09:39:15 17 A. Generally, but, again, I'm not a lawyer.

09:39:20 18 Q. Well, for purposes of my examination, you
09:39:23 19 should never hesitate to ask me to restate a
09:39:27 20 question, or to even rephrase it, if that would help
09:39:30 21 you answer it. So I hope you --

09:39:32 22 A. Thank you. I'm not trying to be contentious.

09:39:35 23 Q. I, I recognize that, Mr. Oldner. I don't think
09:39:38 24 that you are.

09:39:40 25 A. Thank you.

09:39:40 1 Q. But I want you to feel free to ask me at any
09:39:43 2 time to either restate the question or rephrase it,
09:39:46 3 even if that would help you.

09:39:48 4 A. Thank you.

09:39:49 5 Q. Do you understand that?

09:40:24 6 A. Yes, sir.

09:39:50 7 Q. Okay. And if, if you do answer the question,
09:39:52 8 the presumption is that you understood the question,
09:39:55 9 and your answer is responsive to it.

09:39:55 10 A. Yes, sir.

09:39:55 11 Q. Do you understand that?

09:39:58 12 A. Yes, sir.

09:40:36 13 Q. Okay. And if at any time you need to take a
09:40:03 14 break, again, don't hesitate to ask.

09:40:43 15 A. Thank you.

09:40:07 16 Q. Okay. So your, your general background is in
09:40:17 17 the securities industry; is that right?

09:40:19 18 A. Yes, sir.

09:40:20 19 Q. And that was as a trader or a broker?

09:40:23 20 A. I was a broker. I owned a broker, I owned a
09:40:26 21 broker-dealer, financial planning for banks, yes,
09:40:30 22 sir.

09:40:33 23 Q. And can you just give me a general idea of your
09:40:36 24 education background, just on a general level?

09:40:39 25 A. Three years of college, multiple securities

09:40:42 1 degrees.

09:41:14 2 Q. Okay. So you didn't get a degree from college?

09:40:48 3 A. I did not.

09:40:48 4 Q. What college did you go to?

09:40:51 5 A. Hendrix College was the last place I went to
09:40:54 6 college.

09:40:55 7 Q. Where is that located?

09:40:56 8 A. In Conway, Arkansas.

09:41:30 9 Q. And your focus of study there was what?

09:41:03 10 A. English literature.

09:41:04 11 Q. I'm sorry. I didn't hear you.

09:41:06 12 A. English literature.

09:41:09 13 Q. When was the last -- what year was the last
09:41:12 14 year you attended college?

09:41:13 15 A. 1975.

09:41:17 16 Q. And after that you began working as a broker?

09:41:20 17 A. No. I actually managed a jewelry store before
09:41:24 18 that.

09:42:00 19 Q. A grocery store?

09:41:27 20 A. Jewelry.

09:41:29 21 Q. Jewelry?

09:41:29 22 A. A jewelry store.

09:41:31 23 Q. Where was that?

09:41:32 24 A. Little Rock, Arkansas.

09:41:35 25 Q. Was that owned by you?

09:41:36 1 A. No, sir.

09:42:09 2 Q. How long did you manage that?

09:41:40 3 A. Three years.

09:42:12 4 Q. And can you give me the rest of your work
09:41:45 5 history following the jewelry store?

09:41:47 6 A. I worked as the office product sales manager
09:41:51 7 for the 3M distributor in Little Rock, Arkansas. And
09:41:56 8 after that I was in the securities business, the
09:42:00 9 institutional securities business with several
09:42:03 10 broker-dealers and banks in Little Rock, Arkansas.

09:42:42 11 Q. Okay. What time period altogether were you in
09:42:11 12 the securities industry?

09:42:12 13 A. From 1982 through 1998.

09:43:01 14 Q. And prior to 1975, did you have any work
09:42:21 15 history?

09:42:23 16 A. Other than jobs to put me through school, no.

09:42:28 17 Q. Did you go to high school in Arkansas as well?

09:42:30 18 A. I did.

09:43:13 19 Q. Have you pretty much lived in Arkansas your
09:42:34 20 entire professional life?

09:42:36 21 A. Most of it.

09:43:21 22 Q. Where else have you lived other than Arkansas?

09:42:43 23 A. Austin, Texas.

09:43:26 24 Q. Anywhere else?

09:42:50 25 A. No.

09:43:32 1 Q. Who asked you to take on the role of trustee
09:43:00 2 for the Orly Genger Trust?

09:43:02 3 MR. POLLOCK: I object to the reasons
09:43:05 4 previously stated.

09:43:45 5 A. Am I --

09:43:08 6 Q. You can answer?

09:43:08 7 A. -- to answer the question now?

09:43:13 8 MR. POLLOCK: (Counsel nods head.)

09:43:15 9 A. My original contact -- let me, let me think how
09:43:20 10 I should answer that, to give you an honest answer.
09:43:25 11 I was appointed by Dalia Genger.

09:43:32 12 The discussions held about it were with
09:43:36 13 Sagi Genger on her behalf, and originally the subject
09:43:42 14 was broached by Robin Rodriguez.

09:44:22 15 Q. And the subject was first broached by Robin
09:43:51 16 Rodriguez in, around April of 2019; right?

09:44:31 17 A. Yes, sir.

09:43:58 18 Q. How do you know Robin Rodriguez?

09:44:01 19 A. I used to be an employee of Robin Rodriguez
09:44:04 20 when he owned a broker-dealer in Little Rock,
09:44:06 21 Arkansas.

09:44:08 22 Q. What was the name of that company?

09:44:10 23 A. Anglo-American Investor Services Corporation.

09:44:17 24 Q. What years were you an employee there?

09:44:19 25 A. 1989 and 1990, partially. Part of '89, and

09:44:24 1 part of '90.

09:44:28 2 Q. Why did you leave there?

09:44:31 3 A. To purchase a broker-dealer of my own.

09:44:36 4 Q. So before 1989, you did not know Mr. Rodriguez?

09:45:17 5 A. I did not.

09:45:19 6 Q. After you purchased your own broker-dealer, did

09:44:50 7 you maintain a business relationship with Mr.

09:44:52 8 Rodriguez?

09:45:26 9 A. I did not.

09:44:55 10 Q. He didn't have any ownership interest in your

09:44:59 11 broker-dealer?

09:45:00 12 A. He did not.

09:45:00 13 Q. Did he help you set it up?

09:45:41 14 A. He did not.

09:45:48 15 Q. Did you have contact with Mr. Rodriguez between

09:45:13 16 1990 and 2019?

09:45:52 17 A. Yes.

09:45:15 18 Q. What was the nature of that contact?

09:45:17 19 A. We've been acquaintances for a very long time.

09:45:21 20 We stayed in touch.

09:45:23 21 Q. Did you have any business dealings with him in

09:45:26 22 that period of time?

09:45:27 23 A. No, sir.

09:46:16 24 Q. I take it you first met Sagi Genger through

09:45:36 25 Robin Rodriguez?

09:46:20 1 A. Yes, sir.

09:45:38 2 Q. And that was in, sometime after April of 2019?

09:46:22 3 A. Yes, sir.

09:46:23 4 Q. So what did Mr. Rodriguez say to you when he
09:45:50 5 was describing, or you were talking about this topic
09:45:53 6 of the trustee for the Orly Genger Trust?

09:45:58 7 MR. POLLOCK: Objection, again, on the
09:46:00 8 same bases.

09:46:11 9 A. Do I answer the question now?

09:46:12 10 MR. POLLOCK: Go ahead.

09:46:13 11 A. Okay. Sorry. Will you repeat the question,
09:46:14 12 please?

09:46:15 13 Q. Certainly.

09:46:16 14 A. I'm sorry.

09:46:17 15 Q. What was the topic -- let me put it this way.
09:46:20 16 I might be changing it a little bit. What did Mr.
09:46:24 17 Rodriguez say to you when he first brought up this
09:46:27 18 topic of the trustee for the Orly Genger Trust?

09:46:31 19 MR. POLLOCK: Again, I object. None
09:46:31 20 of this has anything to do with the Motion
09:46:33 21 to Dismiss.

09:46:47 22 A. And I may answer the question now? Robin first
09:46:47 23 outlined -- as a securities representative, I'm
09:46:49 24 familiar with derivative actions.

09:46:52 25 He first outlined the derivative case.

09:46:55 1 Then he asked me if I would consider serving as
09:46:59 2 trustee. And then he said sent me --

09:47:06 3 Q. What --

09:47:06 4 A. Sorry. And then he sent me the trust document.
09:47:08 5 That's the complete story.

09:47:21 6 Q. What was the nature of the derivative claim or
09:47:22 7 action that he described to you?

09:47:25 8 A. A party had brought a lawsuit on behalf of a
09:47:27 9 trust. They won the lawsuit on behalf of the trust,
09:47:39 10 but the money did not go to the trust.

09:47:48 11 Q. So after that conversation, Mr. Rodriguez sent
09:47:53 12 you a copy of the Orly Genger Trust, 1993 Trust
09:47:58 13 Agreement; right?

09:47:59 14 A. Yes, sir.

09:48:34 15 Q. And you read it?

09:48:01 16 A. Yes, sir.

09:48:40 17 Q. Did you discuss it with anybody?

09:48:07 18 MR. POLLOCK: Objection, for the same
09:48:09 19 reasons stated.

09:48:12 20 A. May I answer the question now?

09:48:14 21 Q. (Counsel nods head.)

09:48:16 22 A. I discussed it with Robin. I also discussed it
09:48:20 23 with Sagi.

09:48:58 24 Q. Other than Mr. Rodriguez and Sagi Genger, did
09:48:27 25 you discuss it with anyone else?

09:48:30 1 MR. POLLOCK: Mr. Bowen, if I may
09:48:32 2 respectfully caution the witness with
09:48:32 3 respect to preserving the privilege.
09:48:39 4 Q. You can answer the question, but don't get into
09:48:42 5 communications with lawyers.

09:48:46 6 A. Then if we're excluding communications with
09:48:49 7 lawyers, no one else.

09:49:23 8 Q. Did you seek legal advice about the, the
09:48:54 9 trustee agreement?

09:48:56 10 A. I did.

09:49:30 11 Q. And I'm sorry, I said the "trustee agreement."
09:48:59 12 I should have said "Trust Agreement."

09:49:02 13 A. And I'm sorry for making an interpretation. I
09:49:05 14 apologize. I sought legal advice concerning the
09:49:10 15 Trust Agreement.

09:49:11 16 Q. Did you do that before you accepted appointment
09:49:14 17 as trustee?

09:49:15 18 A. I did.

09:49:20 19 Q. What other documents did you review, if any,
09:49:23 20 before accepting the position as trustee?

09:49:28 21 MR. POLLOCK: Object on the same
09:49:29 22 basis, that you appear to be seeking
09:49:31 23 discovery as to diligence that he
09:49:34 24 performed, which is entirely unrelated to
09:49:37 25 the pending Motion to Dismiss and instead

09:49:40 1 appears related to the proposed claims to
09:49:42 2 be sold.

09:50:31 3 Q. You can answer, sir.

09:50:31 4 A. Would you be so kind as to repeat the question
09:49:52 5 for me?

09:50:36 6 Q. The question is what other documents, if any,
09:49:55 7 did you review before accepting the appointment as
09:50:00 8 trustee?

09:50:02 9 A. I read several court documents relating to the
09:50:07 10 fraudulent transferred case.

09:50:53 11 Q. When you say "fraudulent transferred case," can
09:50:18 12 you identify it more than saying that?

09:50:22 13 A. Yes. It's the case that I have filed against
09:50:29 14 certain persons in New York in the Southern District
09:50:34 15 of New York through the corporation REI. That would
09:50:41 16 give the best description.

09:50:43 17 Q. Okay. Thank you. Other than that document,
09:50:46 18 did you review anything else?

09:50:50 19 A. Pardon me?

09:50:51 20 MR. POLLOCK: Objection;
09:50:51 21 mischaracterizes the testimony.

09:50:57 22 Q. Let me just try and clean it up.

09:50:59 23 A. Please.

09:51:35 24 Q. I understood you to say that you reviewed --
09:51:01 25 maybe you said plural -- you reviewed documents

09:51:07 1 related to this Recovery Effort action; is that
09:51:11 2 right?

09:51:44 3 A. I reviewed documents relating to the suit that
09:51:15 4 would later be filed by Recovery Effort. I reviewed
09:51:20 5 previous court opinions, previous rulings, which, of
09:51:26 6 course, I can't cite like you can, but they were
09:51:29 7 numerous.

09:51:30 8 And I have read them as carefully as I was
09:51:35 9 capable of, without being a lawyer, without
09:51:37 10 understanding the legal parts, on which I later
09:51:40 11 relied on counsel.

09:51:42 12 Q. But that was after you accepted appointment or
09:51:45 13 before?

09:52:17 14 A. No, sir. That was relying on counsel. Can we
09:51:51 15 start this question over --

09:51:53 16 Q. Sure.

09:51:53 17 A. -- so it gets answered correctly. I apologize.

09:51:57 18 Q. That's fine. Let me try and ask a better
09:52:02 19 question. When you said a moment ago that you did
09:52:05 20 eventually discuss these documents and these prior
09:52:10 21 court opinions with counsel, did that happen before
09:52:12 22 or after you accepted the position as trustee?

09:52:14 23 A. That happened before. It also happened after.

09:52:18 24 Q. And the lawyer that you discussed it with, who
09:52:28 25 was that, before you accepted appointment?

09:52:31 1 A. That is Tim Cullen, who is present.

09:52:41 2 Q. So other than discussing it with counsel, and
09:52:44 3 discussing it with Mr. Rodriguez, and Ms. Sagi
09:52:46 4 Genger, you didn't discuss anything relating to the
09:52:51 5 Orly Genger Trust with anyone before you accepted the
09:52:53 6 appointment; is that right?

09:52:55 7 MR. POLLOCK: Object on the same
09:52:56 8 basis.

09:52:57 9 A. I may answer the question? That is correct,
09:53:00 10 sir. I did not discuss it with anyone other than
09:53:03 11 counsel, other than Robin Rodriguez, other than Sagi
09:53:06 12 Genger.

09:53:11 13 MR. CAVALIERE: May I just interject a
09:53:12 14 question? This is Rocco Cavaliere on
09:53:14 15 behalf of the trustee. Is Ms. Cullen an
09:53:19 16 attorney licensed to practice law in New
09:53:23 17 York?

09:53:23 18 MR. POLLOCK: I believe it's Mr.
09:53:23 19 Cullen.

09:53:25 20 MR. CAVALIERE: I'm sorry.
09:53:25 21 Mr. Cullen.

09:53:27 22 MR. CULLEN: No, I am not licensed to
09:53:28 23 practice law in New York. I am licensed in
09:53:31 24 Arkansas, where the deponent resides, and
09:53:34 25 where there is a pending Motion to Quash in

09:53:38 1 the United States District Court in
09:53:41 2 Arkansas, where I am licensed.

09:53:44 3 MR. CAVALIERE: Thank you. Is the
09:53:45 4 Trust Agreement that you reviewed,
09:53:46 5 Mr. Cullen, is that --

09:53:50 6 MR. POLLOCK: May I say --

09:53:51 7 MR. CAVALIERE: -- Trust Agreement
09:53:51 8 governed by -- is that Trust Agreement
09:53:52 9 governed by Arkansas?

09:53:56 10 MR. POLLOCK: Sorry. Are you asking
09:53:57 11 Mr. Cullen the question?

09:53:58 12 MR. CAVALIERE: I'm asking, I'm asking
09:53:58 13 Mr., Mr. Oldner, as he's reviewed the Trust
09:54:01 14 Agreement.

09:54:03 15 THE WITNESS: Rocco --

09:54:03 16 MR. CAVALIERE: Mr. Oldner, to your
09:54:04 17 understanding -- one second, please.

09:54:05 18 THE WITNESS: Sure.

09:54:06 19 MR. CAVALIERE: To your understanding
09:54:06 20 is the Trust Agreement governed by Arkansas
09:54:08 21 law?

09:54:09 22 MR. POLLOCK: Objection; seeks a legal
09:54:10 23 conclusion.

09:54:13 24 THE WITNESS: Rocco, another thing, I
09:54:13 25 can't, I can't see you very well. You are

09:54:16 1 on one corner of your pad. Everybody else
09:54:20 2 is kind of in the middle. There you are.
09:54:26 3 I can't hear you now.

09:54:33 4 MR. POLLOCK: Mr. Cavaliere, if you're
09:54:35 5 speaking, we can't hear you anymore.

09:54:38 6 THE WITNESS: But I can see you.

09:54:44 7 MR. CAVALIERE: Okay. I apologize.

09:54:45 8 THE WITNESS: Thank you.

09:54:48 9 MR. CAVALIERE: I have no other
09:54:49 10 questions at this, at this present time.
09:54:51 11 Go ahead, Michael.

09:54:51 12 BY MR. BOWEN:

09:54:52 13 Q. So, Mr. Oldner, did you make any attempts to
09:54:57 14 talk to Dalia Genger?

09:54:59 15 A. I did not.

09:55:37 16 Q. At any point in time?

09:55:02 17 A. At no point.

09:55:41 18 Q. Why is that?

09:55:41 19 A. It's my understanding that Dalia Genger was not
09:55:10 20 in good health.

09:55:11 21 Q. What was, what was -- well, how did you learn
09:55:13 22 that, from whom?

09:55:16 23 MR. POLLOCK: Objection.

09:55:18 24 A. May I answer the question? From Sagi.

09:55:52 25 Q. So when was the first time you met Sagi Genger?

09:55:30 1 MR. POLLOCK: Again, Mr. Bowen, if you
09:55:32 2 can please make a proffer as to what this
09:55:35 3 has to do with a pending Motion to Dismiss,
09:55:37 4 I think that would be helpful to all, and
09:55:39 5 I'm happy to do that offline.

09:55:40 6 I'm happy for him to answer the
09:55:41 7 question. Then we can go off the record
09:55:43 8 and have that discussion.

09:55:44 9 It would be most productive to
09:55:47 10 everybody if you would respectfully even
09:55:49 11 give me one sentence or a short proffer as
09:55:53 12 to why this relates to the pending Motion
09:55:54 13 to Dismiss for which Mr. Oldner has agreed
09:55:58 14 to sit for a deposition today.

09:55:59 15 MR. BOWEN: Mr. Pollock, again I ask
09:56:01 16 you to desist in obstructing this
09:56:03 17 deposition.

09:56:03 18 BY MR. BOWEN:

09:56:04 19 Q. Mr. Oldner, please answer the question.

09:56:06 20 A. Mr. Bowen, would you please restate the
09:56:09 21 question?

09:56:11 22 Q. The question was when did you first meet Sagi
09:56:17 23 Genger?

09:56:17 24 A. On -- in person on June 14th, 2019.

09:56:24 25 Q. Where was that meeting?

09:56:26 1 MR. POLLOCK: Objection on the same
09:56:27 2 grounds.
09:56:28 3 A. May I answer the question?
09:56:32 4 Q. (Counsel nods head.)
09:57:13 5 A. The Community Bakery in Little Rock, Arkansas.
09:57:16 6 Q. Now June 14th, 2019, is the day that you
09:56:43 7 accepted the appointment as trustee; correct?
09:56:46 8 A. That is correct.
09:56:49 9 Q. That was also the first time you met Mr. Sagi
09:56:52 10 Genger in person?
09:56:53 11 A. Yes, sir.
09:56:54 12 Q. Had you spoken with Sagi Genger prior to
09:56:56 13 then --
09:57:39 14 A. Yes.
09:56:57 15 Q. -- before then?
09:56:58 16 A. Yes, sir.
09:57:43 17 Q. How many times?
09:57:01 18 A. I don't know, several.
09:57:12 19 Q. Were those on calls with other people?
09:57:12 20 A. No.
09:57:12 21 Q. So those are just phone calls one-on-one?
09:57:15 22 A. Yes, sir.
09:57:54 23 Q. Did you have email communications with him
09:57:18 24 before June 14th?
09:57:22 25 A. Yes, a few, and those were all produced.

09:58:11 1 Q. What did you discuss with Sagi Genger before
09:57:32 2 you first met him in person?

09:57:35 3 A. The history and nature of the case that was the
09:57:40 4 trust action, or would be the trust action, and the
09:57:45 5 performance that led to the trust not having any
09:57:50 6 money, as much as of the history as he could fill me
09:57:55 7 in on.

09:58:32 8 Q. Were those long conversations?

09:58:00 9 A. Some of them were long.

09:58:03 10 Q. And no one else was on the --

09:58:03 11 A. Define "long." I -- thirty minutes is a long
09:58:12 12 conversation to me.

09:58:13 13 Q. Were some of those conversations 30 minutes or
09:58:15 14 more?

09:58:16 15 A. Yes, sir.

09:58:16 16 Q. And no one else was on the call excerpt you and
09:58:19 17 Mr. Genger?

09:58:20 18 A. No, sir.

09:58:48 19 Q. Did you ever talk to John Dellaportas?

09:58:26 20 MR. POLLOCK: Mr. Bowen, I object on
09:58:28 21 the same grounds and respectfully ask that
09:58:31 22 you make a proffer as to how this is
09:58:33 23 related to the Motion to Dismiss, or I ask
09:58:35 24 that you move on to topics that are
09:58:36 25 related, consistent with Judge Garrity's

09:58:36 1 direction.

09:58:38 2 I have given you a lot of leeway over
09:58:40 3 the past hour. We ask you respectfully to
09:58:43 4 move along.

09:58:45 5 BY MR. BOWEN:

09:58:45 6 Q. You can answer the question, sir.

09:58:47 7 A. May we have a break?

09:58:49 8 MR. GINGER: To the extent -- this is
09:58:50 9 Sagi Genger. To the extent that it's a
09:58:50 10 communication with Mr. Dellaportas --

09:58:52 11 MR. BOWEN: Mr. Genger, you're not
09:58:54 12 permitted to talk. I'm sorry. I'm going
09:58:55 13 to talk over you.

09:58:55 14 MR. GINGER: Please don't interrupt
09:58:55 15 me.

09:58:55 16 MR. BOWEN: You're not permitted to
09:58:56 17 make an appearance. You are not a lawyer,
09:58:59 18 sir. You're not --

09:58:59 19 MR. GINGER: I'm not --

09:59:00 20 MR. BOWEN: -- admitted in this
09:59:00 21 proceeding in any way, shape, or form, and
09:59:04 22 you're not proceeding pro se. You have
09:59:05 23 counsel, so you may not speak. I'm sorry.
09:59:07 24 Contact your lawyer and have your lawyer
09:59:09 25 speak. You may not, sir.

09:59:12 1 MR. POLLOCK: Mr. Bowen, I would ask
09:59:14 2 you respectfully, for the benefit of our
09:59:16 3 court reporter, not to talk over any of
09:59:18 4 the --

09:59:19 5 MR. BOWEN: I'm sorry. I'm going to
09:59:19 6 talk over you now. I'm going to talk over
09:59:21 7 Sagi Genger every time he speaks. He is
09:59:24 8 not a lawyer. He's not helping himself.
09:59:24 9 He must stop.

09:59:25 10 MR. POLLOCK: I would respectfully --

09:59:26 11 MR. BOWEN: Now you may say what you
09:59:28 12 want, Mr. Pollock. Go ahead.

09:59:29 13 MR. POLLOCK: I would respectfully ask
09:59:30 14 that you don't talk over me, as you
09:59:32 15 indicated, and that you don't talk over Mr.
09:59:33 16 Genger, regardless of your position as to
09:59:35 17 Mr. Genger, because our stenographer here
09:59:36 18 will have great difficulty making an
09:59:41 19 accurate record if you persist in speaking
09:59:43 20 over people here. With that noted --

09:59:45 21 BY MR. BOWEN:

09:59:47 22 Q. You may answer the question, Mr. Oldner.

09:59:50 23 MR. POLLOCK: With that noted, I would
09:59:51 24 direct Mr. Oldner not to testify as to
09:59:56 25 common interest privileged materials or

10:00:00 1 conversations, and that would include his
10:00:03 2 conversations with Mr. Dellaportas, so you
10:00:03 3 may not answer the question.

10:00:05 4 MR. KURLAND: That wasn't the
10:00:05 5 question.

10:00:05 6 MR. POLLOCK: I apologize. Who said
10:00:05 7 that? What was the question?

10:00:05 8 MR. BOWEN: I don't know who said it,
10:00:05 9 but they are correct, whoever said it.
10:00:05 10 That wasn't the question.

10:00:24 11 So, Mr. Oldner, let me try again.
10:00:26 12 And, Mr. Pollock, please don't obstruct
10:00:29 13 this line of questioning, or any
10:00:30 14 questioning during this deposition.

10:00:31 15 Your, your conduct is obstructionist
10:00:31 16 and is improper, and I ask you again to
10:00:34 17 stop.

10:00:34 18 BY MR. BOWEN:

10:00:35 19 Q. Mr. Oldner, did you ever speak with Mr.
10:00:39 20 Dellaportas? And you can answer the question with a
10:00:41 21 simple "yes" or "no."

10:01:25 22 A. Yes.

10:00:44 23 Q. And how many times?

10:00:52 24 A. Twice, approximately.

10:00:53 25 Q. Did you speak with him before you accepted the

10:00:55 1 position as trustee?

10:00:57 2 A. I did not.

10:01:45 3 Q. And the two times that you spoke with him after
10:01:02 4 becoming trustee, approximately when did those
10:01:06 5 conversations occur?

10:01:08 6 A. I could be wrong. It could be three times, but
10:01:10 7 I remember meeting him in Austin, Texas in August of
10:01:17 8 2019 and, again, in New York City in January of this
10:01:25 9 year.

10:02:32 10 Q. Who else was present when you met with Mr.
10:01:32 11 Dellaportas?

10:01:34 12 A. At, at which location?

10:01:41 13 Q. You can start with the first one in Texas.

10:01:45 14 A. Many lawyers and Sagi Genger.

10:01:51 15 Q. And the second one?

10:01:54 16 A. Many lawyers and Sagi Genger.

10:02:05 17 Q. What did Sagi Genger tell you about Dalia
10:02:08 18 Genger?

10:02:14 19 MR. POLLOCK: I object on the same
10:02:15 20 grounds.

10:02:17 21 A. That Dalia was his mother, things that are in
10:02:25 22 court documents explaining that, and that his mother
10:02:32 23 was not in good health.

10:02:36 24 Q. What did he say about that?

10:02:39 25 MR. POLLOCK: Objection. Are you

10:02:40 1 asking for details about her health
10:02:43 2 condition? Did I hear you?
10:02:49 3 Q. You can answer that question, sir.
10:02:52 4 A. He gave me no details.
10:02:53 5 Q. How did that topic come up?
10:02:55 6 A. I don't remember.
10:03:37 7 Q. Was it in the context of you asking to speak
10:03:02 8 with Dalia Genger?
10:03:04 9 A. I don't remember.
10:03:43 10 Q. Did you want to speak to her?
10:03:18 11 A. Would I have liked to have spoken to the
10:03:20 12 previous trustee, of course. Did I specifically
10:03:25 13 think I really needed to speak to Dalia Genger, no.
10:03:52 14 Q. And why is that? Why did you think you didn't
10:03:31 15 really need to speak with her?
10:03:34 16 MR. POLLOCK: Objection. If anything,
10:03:34 17 this appears to go to your, the issue of
10:03:38 18 diligence, which relates to the claims that
10:03:40 19 are proposed to be sold to the claims
10:03:42 20 pursuit entity.
10:03:44 21 I would ask respectfully that you make
10:03:47 22 a proffer as to how this is possibly
10:03:49 23 related to the Motion to Dismiss or that
10:03:51 24 you move along to a subject that is related
10:03:53 25 to the pending Motion to Dismiss.

10:03:56 1 Q. You can answer the question, sir.

10:03:57 2 A. May I ask you to restate it, please, or repeat
10:04:00 3 it?

10:04:03 4 Q. The question was why is it that you say that
10:04:18 5 you didn't see a need to speak with her in
10:04:21 6 particular?

10:04:23 7 MR. POLLOCK: I object, and I direct
10:04:25 8 Mr. Oldner to stop answering questions that
10:04:28 9 relate to, appear to relate to a topic that
10:04:32 10 is not at hand, and respectfully ask that
10:04:36 11 you give me a proffer, or that we go
10:04:39 12 offline and have a discussion.

10:04:41 13 I have been very patient here. We've
10:04:43 14 given you a lot of leeway, but it's time to
10:04:46 15 move on to the pending motion, which is
10:04:49 16 consistent with Judge Garrity's direction.

10:04:53 17 He said you could take the deposition
10:04:55 18 on the pending Motion to Dismiss. What he
10:04:57 19 talked about with Dalia Genger in August of
10:04:59 20 2019 or didn't talk with Dalia Genger in
10:05:03 21 August 2019 has nothing to do with anything
10:05:06 22 that we are here for today.

10:05:09 23 MR. BOWEN: Mr. Pollock, once again,
10:05:12 24 you're being obstructionist, and I ask you
10:05:15 25 to stop. I have no obligation to explain

10:05:17 1 to you my line of thinking or my line of
10:05:21 2 questioning.

10:05:21 3 If you don't understand the relevance,
10:05:22 4 that's your problem. You must stop being
10:05:25 5 obstructionist.

10:05:28 6 If you stop obstructing this
10:05:30 7 deposition, you will see the relevance of
10:05:32 8 all of these lines of questioning, but
10:05:34 9 because you keep interfering, that may be
10:05:38 10 impeding your ability to understand what is
10:05:41 11 happening. So please stop.

10:05:43 12 MR. POLLOCK: Mr. Bowen, you have an
10:05:45 13 obligation --

10:05:45 14 BY MR. BOWEN:

10:05:46 15 Q. Mr. Oldner, please answer the question.

10:05:49 16 MR. POLLOCK: Mr. Bowen, you have an
10:05:49 17 obligation to respect the guidance of Judge
10:05:49 18 Garrity, who was very clear when we met by
10:05:53 19 telephone on Tuesday, June 23rd at the four
10:05:56 20 o'clock discovery hearing.

10:05:58 21 I have yet to hear, and I think that
10:05:59 22 it would quite simplify this discussion if
10:06:02 23 you would make a brief proffer, either on
10:06:05 24 the record or off the record, as to how
10:06:08 25 this relates to the topic at hand.

10:06:09 1 BY MR. BOWEN:

10:06:12 2 Q. Mr. Oldner, please answer the question.

10:06:14 3 A. Mr. Bowen, it's my understanding that I have
10:06:19 4 just been instructed by counsel not to answer the
10:06:21 5 question.

10:07:27 6 Q. Well, I have to ask you, sir, what's the
10:06:29 7 question you're not answering?

10:06:32 8 A. The last one you asked.

10:07:38 9 Q. Do you remember the question?

10:06:36 10 A. No, sir, I do not.

10:06:39 11 Q. Neither do I, Mr. Oldner --

10:06:40 12 A. Okay.

10:07:47 13 Q. -- so I'm going to ask the court reporter to
10:06:43 14 please read it back.

10:07:53 15 A. Thank you.

10:07:53 16 COURT REPORTER: Okay. Give me a
10:07:53 17 minute to get back to it.

10:07:53 18 (Court reporter read back the question.)

10:07:16 19 MR. POLLOCK: I have the same
10:07:16 20 objections, and I think that this question
10:07:21 21 and this line of questioning are in clear
10:07:24 22 violation of Judge Garrity's direction.

10:07:29 23 On top of that, the only one who
10:07:32 24 served a subpoena here was the debtor. We
10:07:37 25 are here in an attempt at an accommodation

10:07:39 1 consistent with Judge Garrity's direction.

10:07:44 2 We have from -- the creditor, Kasowitz
10:07:45 3 Benson, emailed a rough draft unsigned PDF
10:07:53 4 form of subpoena.

10:07:54 5 Nonetheless, we are attempting to be
10:07:56 6 accommodating without prejudice and without
10:07:59 7 waiver of our pending Motion to Quash.

10:08:02 8 I respectfully suggest that if you
10:08:04 9 want to have a deposition on the pending
10:08:06 10 Motion to Dismiss that we have that, but it
10:08:08 11 appears that you are seeking discovery on
10:08:10 12 the claims that are to be sold.

10:08:17 13 It is clearly what Judge Garrity
10:08:19 14 directed not to do, and you're out of line.
10:08:23 15 And that is obstructionist and wasting
10:08:26 16 time. I would respectfully ask that you
10:08:29 17 move along to the topic at hand.

10:08:33 18 Q. Mr. Oldner, please answer that question.

10:08:37 19 A. Am I --

10:08:38 20 Q. The question was, because I'm sure it's hard to
10:08:41 21 remember, with that long speaking objection, but the
10:08:41 22 question was Why is it that you didn't think that you
10:08:45 23 had a particular need to speak with Dalia Genger?

10:08:49 24 A. Am I to answer the question or not?

10:08:57 25 MR. POLLOCK: A, I think he did answer

10:09:00 1 this, but, B, I think it's time to move on.

10:09:07 2 A. Mr. Bowen, is it acceptable for us to take a
10:09:13 3 break?

10:09:14 4 Q. Certainly, but I would prefer not to take a
10:09:16 5 break while a question is pending, so can you answer
10:09:18 6 that question, and then we'll take a break?

10:09:21 7 A. Am I to answer the question or not?

10:09:26 8 MR. CULLEN: No.

10:09:27 9 A. On advice of counsel, I will not answer that
10:09:29 10 question.

10:25:07 11 Q. Okay. Well, let's take a break now. So why
10:09:35 12 don't we say -- it's 11:11. How's ten minutes, is
10:09:41 13 that okay, Mr. Oldner, or --

10:09:41 14 A. Ten minutes is a break --

10:09:41 15 Q. -- do you need more time?

10:09:42 16 A. -- for me.

10:09:46 17 Q. Okay. So we'll come back at, say 11 -- let's
10:09:46 18 just say 11:25.

10:25:21 19 A. Okay.

10:09:49 20 Q. Thank you.

10:24:40 21 A. Thank you.

10:24:40 22 (Fifteen-minute break.)

10:24:40 23 BY MR. BOWEN:

10:26:12 24 Q. Mr. Oldner --

10:26:13 25 A. Yes, sir.

10:26:14 1 Q. -- going back to Dalia Genger --

10:26:55 2 A. Yes, sir.

10:26:56 3 Q. -- I take it that Mr. Sagi, Sagi -- excuse

10:26:23 4 me -- Sagi Genger told you that his mother Dalia

10:26:26 5 Genger was unwell?

10:26:31 6 MR. POLLOCK: Objection.

10:26:32 7 Q. Is that right?

10:27:12 8 MR. POLLOCK: Objection to the grounds

10:26:34 9 previously stated.

10:26:37 10 A. I, I don't know if he told me she was unwell.

10:26:42 11 The implication was she was not in good health.

10:26:46 12 Q. And if I understood you correctly before the

10:26:49 13 break, your testimony was that that's pretty much all

10:26:54 14 he said. He didn't provide any details about her

10:26:57 15 health; right?

10:26:59 16 A. He provided no detail.

10:27:01 17 MR. POLLOCK: Objection.

10:27:02 18 A. Sorry.

10:27:02 19 MR. POLLOCK: Objection.

10:27:02 20 A. He provided no details.

10:27:11 21 Q. And did you feel that you couldn't talk to

10:27:15 22 Dalia Genger because of a health-related issue?

10:27:21 23 MR. POLLOCK: Objection.

10:27:21 24 A. Would you say the question again, please?

10:28:13 25 Q. Did you feel that you either couldn't or should

10:27:29 1 not talk to Dalia Genger because of a health-related
10:27:33 2 issue that she had?

10:27:35 3 A. No, sir, I did not.

10:28:24 4 Q. So from the time that you accepted the
10:27:57 5 appointment up through today, what's your
10:27:59 6 understanding of the main goal that you have as
10:28:02 7 trustee for the trust?

10:28:05 8 MR. POLLOCK: Mr. Bowen, I object on
10:28:07 9 the same grounds. This is completely
10:28:09 10 unrelated to the pending Motion to Dismiss.

10:28:50 11 A. Mr. Bowen --

10:28:16 12 Q. You can answer.

10:28:17 13 A. -- would you please restate, just say the same
10:28:20 14 question again.

10:29:00 15 Q. During this whole period of time after you were
10:28:24 16 appointed trustee, what's your understanding of what
10:28:27 17 the main goal is for the trust?

10:28:30 18 MR. POLLOCK: Objection.

10:28:31 19 A. My goal is to recover monies that belong to the
10:28:35 20 trust for the beneficiaries of the trust.

10:28:44 21 Q. And your understanding is that the
10:28:47 22 beneficiaries are Orly Genger and her descendants;
10:28:49 23 correct?

10:28:51 24 A. Yes, correct.

10:28:54 25 Q. And the asset that you, that the trust is

10:29:00 1 focused on recovering is the \$32 million related to
10:29:03 2 the 2013 Settlement Agreement?

10:29:50 3 A. The \$32.3 million related to the settlement of
10:29:15 4 a derivative lawsuit that did not go to the trust,
10:29:20 5 that went to others.

10:29:26 6 Q. But the trust's position is that that money
10:29:30 7 belongs to the trust for the benefit of the
10:29:34 8 beneficiaries; right?

10:29:35 9 A. Yes, sir.

10:30:13 10 Q. And you reached that conclusion before you
10:29:42 11 accepted the position as trustee?

10:29:45 12 MR. POLLOCK: Objection for the
10:29:46 13 grounds previously stated. His diligence
10:29:50 14 performed before he became trustee or after
10:29:52 15 he became trustee has nothing to do with
10:29:54 16 the pending Motion to Dismiss.

10:30:58 17 A. Mr. Bowen, I will answer the question if you
10:30:04 18 will please ask it again.

10:30:05 19 Q. Did, did you reach the conclusion that that
10:30:08 20 money was an asset of the trust before you took the
10:30:13 21 position as trustee?

10:30:15 22 MR. POLLOCK: Objection.

10:30:16 23 A. Yes, sir, I did.

10:30:38 24 Q. Did you talk to any lawyers who represented
10:30:41 25 Dalia Genger when she was the trustee?

10:30:45 1 A. At what point?

10:30:51 2 Q. At any point.

10:30:57 3 MR. POLLOCK: Objection for the
10:30:58 4 reasons stated.

10:31:02 5 A. Repeat the question, and I will answer.

10:31:05 6 Q. Did you discuss or did you talk with any
10:31:09 7 lawyers who represented Dalia Genger during the time
10:31:12 8 that she was the trustee?

10:31:14 9 MR. POLLOCK: Objection.

10:31:16 10 A. I might have talked -- no, I did not, that I --
10:31:25 11 to the best of my knowledge, I did not, not that
10:31:27 12 represented her when she was trustee.

10:31:30 13 Q. Did you --

10:31:30 14 A. There are a lot of lawyers involved.

10:31:35 15 Q. You don't have to tell me that.

10:31:36 16 A. I know you know.

10:32:18 17 Q. Did you discuss -- did you ever speak with any
10:31:44 18 lawyer who represents or represented Dalia Genger at
10:31:49 19 any point in time, in any capacity?

10:31:52 20 A. I believe that I may have spoken to one or more
10:31:58 21 of Dalia's lawyers during the time I was in Austin,
10:32:04 22 but there were many lawyers present.

10:32:08 23 I believe that one represented her, but I
10:32:11 24 could be incorrect. The answer would be I don't
10:32:15 25 know, but I kind of would think so.

10:32:20 1 Q. Do you have an understanding of what Dalia
10:32:22 2 Genger -- let me try it again. Do you have an
10:32:27 3 understanding of what Dalia Genger's position is with
10:32:31 4 respect to the same \$32 million that you mentioned a
10:32:34 5 moment ago?

10:32:36 6 MR. POLLOCK: Objection, seeks
10:32:36 7 speculation.

10:32:42 8 A. In general.

10:32:44 9 Q. And what is that?

10:32:49 10 MR. POLLOCK: Same objection.

10:32:50 11 A. It is, it is my understanding that Dalia seeks
10:32:56 12 some of the same monies that the trust seeks in order
10:33:01 13 to pay obligations owed to her to support her
10:33:05 14 lifestyle from the divorce decree. Anything further.

10:33:10 15 Q. Where did you get that -- I'm sorry.

10:33:10 16 A. I'm sorry.

10:33:10 17 Q. I spoke over you. I apologize.

10:33:11 18 A. My, my answer goes into your next question with
10:33:23 19 the rest of anything I say.

10:33:25 20 Q. Well, I apologize for speaking over you. It
10:33:28 21 wasn't my intent.

10:34:02 22 A. I'm sorry.

10:33:30 23 Q. So your understanding is that Dalia Genger has
10:33:34 24 a claim that some of the same \$32 million that the
10:33:39 25 trust is claiming belongs to the trust really belongs

10:33:42 1 to her?

10:33:43 2 MR. POLLOCK: Michael, and I apologize
10:33:45 3 for this. I'm having a little trouble
10:33:45 4 hearing you. Are you seeking information
10:33:48 5 about her claims while she was trustee or
10:33:51 6 her present day claims? I just can't hear
10:33:54 7 if you say "has" or "had," and it's hard
10:33:56 8 for me to hear with this remote connection.

10:34:00 9 MR. BOWEN: Well, however the witness
10:34:01 10 can answer. Let's, let's start with the
10:34:03 11 present understanding, of her present
10:34:06 12 position.

10:34:07 13 THE WITNESS: It's my understanding --

10:34:08 14 BY MR. BOWEN:

10:34:09 15 Q. Let me ask a question, sir.

10:34:11 16 A. Yes, please. Thank you.

10:34:13 17 Q. Is it your understanding that her present
10:34:15 18 position is that some of that same \$32 million that
10:34:20 19 the trust claims belongs to the trust really belongs
10:34:25 20 to her?

10:34:27 21 A. It is my understanding that that is her claim.

10:34:32 22 Q. And is it your understanding that she had that
10:34:34 23 same claim even during the period where she was the
10:34:38 24 trustee of the trust?

10:34:40 25 MR. POLLOCK: Objection. Mr. Bowen,

10:34:40 1 you seem to be seeking testimony with
10:34:44 2 respect to your adversary proceeding, and
10:34:47 3 that is precisely what Judge, Judge Garrity
10:34:51 4 directed during the Tuesday, June 23rd
10:34:54 5 teleconference that we wouldn't be doing
10:34:56 6 during this current phase of discovery.

10:34:59 7 In fact, I think he said something to
10:35:00 8 the effect of, If we get to her adversary
10:35:02 9 proceeding, then we'll take discovery on
10:35:05 10 her adversary proceeding.

10:35:08 11 I would respectfully ask that you save
10:35:10 12 this line of questioning until we are
10:35:12 13 conducting discovery on her adversary
10:35:15 14 proceeding.

10:35:17 15 MR. HERSCHMANN: It's Eric Herschmann.
10:35:17 16 I've joined the deposition.
10:35:17 17 H-e-r-s-c-h-m-a-n-n.

10:35:24 18 And just, Adam, I heard your last
10:35:25 19 comment. I think Judge Davis mentioned a
10:35:25 20 constructive trust when he said that. I'm
10:35:29 21 sorry, Judge Garrity.

10:35:29 22 MR. BOWEN: Eric, there's, there's a
10:35:29 23 long history here. We'll fill you in.

10:35:35 24 Mr. Pollock, I see that you are
10:35:38 25 continuing to be obstructionist. I will

10:35:40 1 ask you for the umpteenth time to please
10:35:43 2 limit your objections to the word
10:35:45 3 "Objection," which is what the rules
10:35:47 4 require.

10:35:47 5 If you desist in the obstruction of
10:35:52 6 this deposition, you will see the relevance
10:35:52 7 of my line of questioning.

10:35:54 8 So, once again, and I have to say,
10:35:56 9 because this has been going on all morning
10:35:59 10 since the very first two or three questions
10:36:02 11 that I asked, that this deposition is not
10:36:05 12 going to be able to conclude today.

10:36:07 13 It's going to take too, much more time
10:36:10 14 that it should take, and it's going to
10:36:13 15 impinge on Mr. Oldner's time. So I ask you
10:36:15 16 to please desist. I don't know how else to
10:36:17 17 say it.

10:36:18 18 But the consequences of you continuing
10:36:22 19 to obstruct are going to reflect on you and
10:36:23 20 impinge on your client. So I ask you, sir,
10:36:27 21 stop.

10:36:30 22 BY MR. BOWEN:

10:36:31 23 Q. Mr. Oldner, please answer the question.

10:36:33 24 A. I know this will come as no shock to you, but
10:36:36 25 after that exchange, could you please repeat the

10:36:39 1 question?

10:37:12 2 Q. Certainly. The question is did you have, or do
10:36:46 3 you have the understanding now that that was also
10:36:49 4 Dalia Genger's same position during the time that she
10:36:52 5 was the trustee?

10:36:55 6 MR. POLLOCK: Objection; seeks
10:36:57 7 speculation, and objection for the reasons
10:36:59 8 stated previously. This is far out of
10:37:01 9 line.

10:37:02 10 A. And I would say that that, for me, is a
10:37:05 11 technical legal matter, and I will not be able to
10:37:08 12 answer that with anything other than I truly don't
10:37:11 13 know.

10:37:17 14 If you can phrase it a different way, maybe
10:37:19 15 I can understand it, but I really don't understand
10:37:22 16 part of what you're asking.

10:38:03 17 Q. Well, let me, let me ask it this way. Did, did
10:37:30 18 you have an understanding at any time that Dalia
10:37:33 19 Genger's position as to who owns the \$32 million
10:37:37 20 changed over time?

10:37:46 21 MR. POLLOCK: Objection for the
10:37:47 22 reasons previously stated.

10:37:49 23 A. I have no understanding on that one way or the
10:37:51 24 other.

10:37:52 25 Q. Do you have any understanding about why Dalia

10:37:54 1 Genger was stepping down as the trustee?

10:37:58 2 MR. POLLOCK: Objection for the

10:37:59 3 reasons previously stated.

10:38:00 4 A. Those, those are, again, speculation. I have

10:38:04 5 guesses, but that would be all.

10:38:42 6 Q. Because you never spoke to her directly; right?

10:38:12 7 A. That probably -- it's as good of reason as any,

10:38:17 8 yes, sir.

10:38:18 9 Q. Well, I just want to just double check. I

10:38:20 10 mean, you never spoke to Dalia Genger at all about

10:38:22 11 anything; correct?

10:38:24 12 A. No, sir.

10:38:25 13 MR. POLLOCK: Objection; asked and

10:38:26 14 answered.

10:38:26 15 Q. You can answer again.

10:38:28 16 A. No, sir, I did not.

10:38:32 17 Q. So you didn't have any understanding about why

10:38:35 18 Dalia Genger was stepping down as trustee?

10:38:39 19 MR. POLLOCK: Objection,

10:38:39 20 mischaracterizes the testimony.

10:38:46 21 Q. You can answer.

10:38:48 22 A. I have no concrete reason. There was no

10:38:52 23 concrete reason given to me Dalia Genger is stepping

10:38:56 24 down for X, Y, or Z.

10:38:59 25 My assumption is because she was no longer

10:39:02 1 in health to do it. I do not truly know her state of
10:39:06 2 mind at that time.

10:39:43 3 Q. And you're basing that assumption on what Sagi
10:39:12 4 Genger said?

10:39:14 5 A. I'm basing that assumption on the fact that she
10:39:18 6 appointed me as trustee, and I accepted, and she was
10:39:23 7 no longer trustee. So for some reason she no longer
10:39:30 8 wanted to be trustee, or she no longer felt she could
10:39:34 9 be trustee. I do not know.

10:40:07 10 Q. And you never asked anyone why; is that right?

10:39:39 11 A. No, sir, I did not.

10:39:43 12 Q. What, what was your understanding about why you
10:39:45 13 were selected to become the new trustee?

10:39:49 14 MR. POLLOCK: Objection, for the
10:39:50 15 reasons previously stated.

10:39:52 16 A. Mr. Bowen, at this time, of course, I would
10:39:57 17 like to say, I would like to make a joke and say
10:40:01 18 because I am so lucky, but that would not answer your
10:40:04 19 question.

10:40:04 20 The reason I assumed that I was selected as
10:40:07 21 trustee is because I could be fair. I could be
10:40:11 22 impartial, and I could do the job.

10:40:19 23 Q. And your basis for saying that you were
10:40:22 24 selected because you could do the job is not based on
10:40:24 25 any prior experience that you have being a trustee

10:40:27 1 for anything; right?

10:40:30 2 A. It would be on the basis of my experience in
10:40:33 3 the securities industry, my understanding of what
10:40:37 4 happens in a derivative action, my understanding of
10:40:40 5 what a fiduciary responsibility is.

10:41:13 6 Q. So what is your understanding of what your
10:40:46 7 fiduciary responsibility is as a trustee, as the
10:40:50 8 trustee or the Orly Genger Trust?

10:40:53 9 MR. POLLOCK: Objection. Any -- the
10:40:55 10 entire line of questions about his
10:40:57 11 fiduciary duties appear to go directly to
10:41:00 12 your claims that are proposed to be sold to
10:41:04 13 the entity Claims Pursue, Inc., which are
10:41:07 14 purportedly with respect to Mr. Oldner's
10:41:10 15 alleged breach of his fiduciary duty.

10:41:12 16 You don't need to be taking deposition
10:41:14 17 today on his alleged duty, on alleged
10:41:15 18 breaches or his faithfulness to his
10:41:19 19 fiduciary duty.

10:41:21 20 And what's more is these are precisely
10:41:23 21 the topics that Mr. -- I apologize -- that
10:41:28 22 Judge Garrity said we wouldn't be doing,
10:41:30 23 that we would not be taking discovery on
10:41:33 24 the underlying claims that proposed to be
10:41:35 25 sold.

10:41:37 1 MR. BOWEN: Please stop being
10:41:37 2 obstructionist and obstructing this
10:41:41 3 deposition, Mr. --
10:41:45 4 MR. POLLOCK: Pollock.
10:41:46 5 MR. BOWEN: -- Pollock.
10:41:46 6 BY MR. BOWEN:
10:41:46 7 Q. Mr. Oldner, please answer the question. What
10:41:49 8 is your understanding of your fiduciary duties as the
10:41:56 9 trustee for the Orly Genger Trust?
10:42:32 10 A. Thank you for restating the question without
10:42:01 11 being asked. My understanding is, is that it is the
10:42:06 12 highest responsibility that I can have is fiduciary
10:42:08 13 responsibility in the state of Arkansas, and that my
10:42:12 14 responsibility is to see to it that there is as much
10:42:16 15 value in the trust as can possibly be in the trust
10:42:19 16 for its beneficiaries, both current and future
10:42:22 17 generations.
10:42:27 18 Q. Now you also said that you could be fair and
10:42:30 19 neutral; right?
10:42:34 20 A. Did I say "neutral"?
10:42:36 21 MR. POLLOCK: Objection.
10:42:38 22 A. I can. I'm, I'm fair and unbiased.
10:43:13 23 Q. You're unbiased?
10:42:43 24 A. I'm, I'm an outsider. I believe certain things
10:42:47 25 are true, but I don't believe certain things are true

10:42:50 1 because I have been in the middle of this for years
10:42:53 2 and years.

10:43:24 3 Q. Well, you have a personal relationship with
10:42:58 4 Robin Rodriguez?

10:43:00 5 A. My personal relationship with Robin Rodriguez
10:43:03 6 does not affect my fiduciary responsibility
10:43:07 7 negatively.

10:43:09 8 Q. I'm not asking you to say one way or the other
10:43:13 9 how it affects your responsibility as a fiduciary.
10:43:16 10 I'm just asking, you have a personal relationship
10:43:20 11 with Robin Rodriguez that goes back to 1990; correct?

10:43:23 12 A. Yes, sir.

10:43:23 13 MR. POLLOCK: Objection, Mr. Oldner,
10:43:24 14 if you could --

10:43:24 15 Q. And you also have a relationship with Sagi
10:43:28 16 Genger, who you met through Robin Rodriguez; correct?

10:43:32 17 MR. POLLOCK: Objection, for the
10:43:32 18 reasons stated.

10:43:35 19 Q. Is that correct?

10:43:37 20 A. I know Sagi Genger through Robin Rodriguez,
10:43:41 21 yes.

10:44:12 22 Q. And you have never spoken with Orly Genger;
10:43:46 23 right?

10:44:23 24 A. That's correct.

10:43:49 25 Q. Or anybody who represents her position in this

10:43:52 1 bankruptcy; isn't that right?

10:43:54 2 A. That's correct.

10:43:57 3 Q. So I take it from your answer that you made an
10:44:00 4 effort to put yourself in Orly Genger's position as
10:44:03 5 the debtor and to understand her point of view on all
10:44:08 6 of this; is that correct?

10:44:11 7 MR. POLLOCK: Objection. Objection to
10:44:12 8 form, and for the reasons previously
10:44:15 9 stated.

10:44:22 10 A. To put myself in her position as debtor --

10:44:26 11 Q. Yes.

10:44:26 12 A. -- as in bankruptcy?

10:44:28 13 Q. Yes.

10:44:30 14 A. That did not fall within my purview as trustee.

10:45:22 15 Q. Well, did you consider what her position is as
10:44:42 16 the beneficiary of the trust?

10:45:37 17 A. Yes, I did.

10:44:47 18 MR. POLLOCK: Objection.

10:44:50 19 Q. You did?

10:44:51 20 A. Yes, I did.

10:44:52 21 Q. And how do you characterize -- let me, let me
10:44:57 22 ask it this way. Do you see Orly Genger's position
10:45:04 23 in this bankruptcy as consistent with the trust's
10:45:10 24 position?

10:45:15 25 MR. POLLOCK: Objection to that form.

10:45:16 1 A. I don't -- no, I do not.

10:45:22 2 Q. How is it not consistent?

10:45:25 3 MR. POLLOCK: Objection; seeks a legal
10:45:27 4 conclusion.

10:45:35 5 Q. You can answer.

10:45:37 6 A. I believe that -- Adam's right. I believe that
10:45:41 7 I would have to have greater legal knowledge than I
10:45:44 8 have.

10:45:46 9 Q. Do, do you have an understanding of what Orly
10:45:49 10 Genger's legal position is with respect to the
10:45:52 11 \$32.3 million that you referred to?

10:45:57 12 MR. POLLOCK: Objection to form.

10:46:02 13 Q. You can answer.

10:46:03 14 A. That is also a technical question.

10:46:50 15 Q. You don't have an answer to your own
10:46:11 16 understanding of what her position is?

10:46:16 17 MR. POLLOCK: Objection to form.

10:46:18 18 A. I don't know what you mean. I'm not trying to
10:46:21 19 be evasive.

10:47:05 20 Q. What's the trust's position with respect to
10:46:36 21 whether or not the \$32.3 million that you refer to is
10:46:40 22 part of the debtor's estate or not?

10:47:15 23 A. It is not part of the debtor's estate.

10:46:47 24 Q. And what is Orly Genger's position on that same
10:46:50 25 question?

10:46:51 1 MR. POLLOCK: Objection to form.

10:46:54 2 A. Once again, that's a legal question. I don't
10:46:56 3 know.

10:47:33 4 Q. You've never discussed that with anyone?

10:47:02 5 MR. POLLOCK: Mr. Bowen, if you're
10:47:03 6 seeking testimony about what he discussed
10:47:03 7 with counsel, I'll caution the witness not
10:47:06 8 to answer, but also, can I just clarify?

10:47:08 9 Are you asking him what Orly's
10:47:10 10 position, Orly Genger's position is as to
10:47:13 11 the bankruptcy? Wasn't she deposed
10:47:16 12 yesterday?

10:47:26 13 Q. Mr. Oldner, can you answer the question?

10:47:28 14 A. Mr. Bowen, I don't understand the question.

10:47:31 15 MR. POLLOCK: Yeah, me either.

10:47:32 16 Q. I'm asking you to leave aside -- well, let me
10:47:34 17 do it in two steps. The first question is just a
10:47:37 18 yes-or-no answer I'm looking for.

10:47:39 19 Do you have an understanding of what Orly
10:47:41 20 Genger's position is with respect to that \$32 million
10:47:45 21 and whether or not it is or should be an asset of her
10:47:48 22 bankruptcy estate?

10:48:00 23 A. I do not have an understanding of that.

10:48:03 24 Q. And if I understood you correctly, what you
10:48:06 25 said before was that if you were to try and figure

10:48:10 1 that out, you would discuss it with your lawyers; is
10:48:13 2 that right?

10:48:40 3 A. I would indeed.

10:48:43 4 Q. But you haven't done anything to try and
10:48:18 5 understand her position on that issue; is that
10:48:21 6 correct?

10:48:22 7 MR. POLLOCK: Again, I would just
10:48:23 8 caution the witness not to discuss what he
10:48:25 9 has communicated or conveyed with counsel.

10:48:29 10 Given that he just responded that if
10:48:31 11 he did something he would have done it with
10:48:34 12 counsel. Now you're asking what he did. I
10:48:36 13 think that the question is directly seeking
10:48:38 14 privileged communications.

10:48:42 15 MR. BOWEN: Mr. Pollock, you're again
10:48:43 16 obstructing the deposition. You're again
10:48:45 17 making speaking objections.

10:48:47 18 Obviously you're coaching your
10:48:47 19 witness. You're again in violation of the
10:48:50 20 rules, and I again ask you to stop.

10:48:51 21 Listen, you're going to leave me in a
10:48:53 22 position where I have no choice but to
10:48:55 23 present this transcript to the judge in
10:48:57 24 our, as part of our application for, for
10:48:59 25 relief, and to address this kind of

10:49:01 1 recalcitrant conduct on your part.

10:49:02 2 And I don't want to do that, and I
10:49:05 3 think if you stop now, we can make it
10:49:08 4 through the rest of this deposition and,
10:49:10 5 and perhaps maybe even finish today.

10:49:12 6 That's my goal, Mr. Oldner.

10:49:14 7 So I ask you again to please stop. If
10:49:17 8 you keep doing it you're going to really
10:49:17 9 leave me no choice.

10:49:19 10 MR. HERSCHMANN: It's Eric Herschmann.
10:49:21 11 Can I make a suggestion to Mr. Pollock, so
10:49:22 12 he can stop this, at least from what I've
10:49:22 13 seen so far?

10:49:23 14 Why don't we give you a standing
10:49:26 15 objection. Then you don't have to say
10:49:28 16 another word, other than instruct your
10:49:31 17 client not to answer on privilege grounds.
10:49:32 18 Will you accept a standing objection?

10:49:35 19 MR. POLLOCK: Mr. Herschmann, I hear
10:49:36 20 you, and I, I will consider that. In the
10:49:40 21 meantime, I am just respectfully asking
10:49:44 22 with respect to this question that it
10:49:46 23 appears, based on the answer to the
10:49:48 24 previous question that it would be directly
10:49:49 25 seeking privileged communication.

10:49:51 1 And I think it's entirely reasonable
10:49:52 2 to caution the witness, when a question
10:49:54 3 appears to be seeking privileged
10:49:56 4 communications, to caution the witness to
10:49:59 5 not reveal privileged communications.
10:50:02 6 That's all.

10:50:05 7 MR. HERSCHMANN: The question, the
10:50:06 8 question is -- if you're not going to
10:50:06 9 accept that as a standing objection, I'm
10:50:09 10 certain we will raise it with Judge
10:50:11 11 Garrity.

10:50:13 12 So I suggest you take our offer, so
10:50:13 13 it's preserved for the Court, and then we
10:50:17 14 don't have to have an issue with sanctions
10:50:19 15 or anything else. This is my suggestion to
10:50:20 16 you, take it.

10:50:22 17 MR. POLLOCK: Mr. Herschmann, you have
10:50:24 18 preserved your objection.

10:50:25 19 BY MR. BOWEN:

10:50:26 20 Q. Mr. Oldner, the question is, and I'd like you
10:50:28 21 to answer it now without any further objection from
10:50:28 22 Mr. Pollock, and you can, you can all assume that the
10:50:32 23 objection is, is reimposed here to this question, and
10:50:36 24 the question is as follows.

10:50:40 25 I take it from your last answer that you

10:50:43 1 have never discussed with anyone what Orly Genger's
10:50:49 2 position is in this bankruptcy with respect to that
10:50:51 3 \$32 million; right?

10:50:55 4 A. I did not.

10:51:30 5 Q. Okay. Now you, you mentioned -- I want to go
10:51:01 6 back to this about this topic that you were selected
10:51:05 7 to be the trustee. Who, who made the decision that
10:51:09 8 the new trustee should be you, to your understanding?

10:51:14 9 A. To my understanding, Dalia Genger.

10:51:18 10 Q. Well, you never spoke to her; correct?

10:52:01 11 A. I never spoke to her.

10:51:22 12 Q. So what do you base that understanding on?

10:51:25 13 A. The fact that she signed the document
10:51:29 14 appointing me trustee.

10:51:31 15 Q. And who did you speak with about that document,
10:51:41 16 leaving the lawyers aside?

10:51:44 17 A. Sagi Genger.

10:51:45 18 Q. Did Sagi Genger tell you that Dalia Genger had
10:51:48 19 deemed you the best choice for the successor trustee?

10:51:52 20 A. Yes.

10:51:53 21 Q. What words did he say, as best you can recall?

10:51:57 22 A. As best I can recall, he come -- that his
10:52:01 23 mother had appointed me trustee. That's --

10:52:06 24 Q. Did he --

10:52:06 25 A. -- that's all I --

10:52:08 1 Q. -- tell you that there were other -- I'm sorry.

10:52:11 2 What was the last thing you said?

10:52:13 3 A. He mentioned, he mentioned one other person

10:52:16 4 and, and didn't say anything about anybody else, when

10:52:18 5 I asked him.

10:52:21 6 Q. And who was the one other person?

10:52:23 7 A. He didn't tell me.

10:52:30 8 Q. So your understanding was that the choice was

10:52:32 9 between you and one other person to be the successor

10:52:34 10 trustee?

10:52:36 11 A. I have no idea how many people were considered.

10:52:39 12 Q. What process was followed to identify potential

10:52:44 13 candidates for this position, to your, to your

10:52:47 14 knowledge?

10:52:47 15 A. I have no knowledge of that.

10:52:50 16 Q. Were you interviewed by Sagi Genger?

10:52:54 17 A. Yes.

10:53:41 18 Q. What did he ask you?

10:53:06 19 A. I actually don't remember.

10:53:47 20 Q. Why do you say you were interviewed by him?

10:53:14 21 A. Because of the process of talking about the

10:53:20 22 trust, about selecting a trustee. I'm assuming that

10:53:27 23 process would constitute an interview.

10:53:29 24 Did we have a formal interview? If we did,

10:53:32 25 it was the, when he flew down here and spent three

10:53:37 1 hours with me on June --

10:53:40 2 Q. And that was in June --

10:53:41 3 A. The 14th.

10:54:12 4 Q. And what did you spend that time doing?

10:53:47 5 A. Talking about the trust, the history of the

10:53:49 6 cases, going back to 2004.

10:53:55 7 Q. Did he bring documents with him?

10:54:29 8 A. He did not.

10:53:58 9 Q. Did he have --

10:53:58 10 A. Other than the documents --

10:53:59 11 Q. -- a computer --

10:54:00 12 A. -- other than the documents appointing me

10:54:02 13 trustee, and the document I had to sign agreeing that

10:54:07 14 I would be trustee, accepting it.

10:54:46 15 Q. So he brought that document to you?

10:54:13 16 A. He did.

10:54:48 17 Q. And who else was present when you signed that

10:54:18 18 document?

10:54:52 19 A. The notary at, at this office, as a matter of

10:54:28 20 fact, a notary, a notary at the law office where we

10:54:31 21 are now.

10:54:32 22 Q. That's Mr. Cullen's law office?

10:54:35 23 A. No. This is Gary Green's law office.

10:55:08 24 Q. Did he have any other documents with him, or

10:54:44 25 show you any other documents, either on a computer or

10:54:47 1 anything else?

10:54:48 2 A. He showed me nothing on a computer, and at this
10:54:51 3 time I don't recall any other documents.

10:55:24 4 Q. Did you sign the document accepting the
10:55:00 5 position as trustee at the beginning of that meeting
10:55:02 6 or at the end?

10:55:35 7 A. At the end.

10:55:37 8 Q. And you haven't made up your mind whether to
10:55:09 9 take the position until the end of the meeting?

10:55:13 10 A. I had actually decided that if I were offered
10:55:16 11 the position, I would take the position before then.

10:55:58 12 Q. But you weren't offered the position until that
10:55:23 13 three-hour meeting with Sagi Genger on June 14th,
10:55:26 14 2019?

10:55:29 15 A. Officially, no.

10:56:10 16 Q. Would it -- were, were you unofficially offered
10:55:35 17 it before that?

10:55:36 18 A. Not that I know of. But we held discussions
10:55:40 19 about if I were trustee, but there was no, You will
10:55:46 20 be the trustee from henceforth.

10:56:21 21 Q. And when you say "we held discussions," you
10:55:52 22 mean you and Mr. Sagi, Sagi Genger?

10:55:57 23 A. Sagi Genger and I, yes.

10:55:58 24 Q. How did you answer that question, If you were
10:56:00 25 the trustee, what would you do?

10:56:34 1 A. Pardon me? I didn't understand.

10:56:10 2 Q. In your last answer you said you had discussed
10:56:12 3 with Sagi, you weren't officially offered anything,
10:56:16 4 but you discussed if you were the trustee, et cetera.

10:56:19 5 So what did you say when you were
10:56:21 6 discussing hypothetically what you would do if you
10:56:25 7 were the trustee?

10:56:26 8 A. That's what makes me think it's an interview.
10:56:31 9 I have no idea. Everything would be a
10:56:34 10 generalization, and I could easily mischaracterize
10:56:38 11 it, general matters concerning the trust --

10:56:46 12 Q. Well --

10:56:46 13 A. -- and the --

10:56:46 14 Q. I don't -- I'm not -- I'm sorry. Say it again.

10:56:46 15 A. And the lack of assets in the trust.

10:56:50 16 Q. The lack --

10:56:50 17 A. The trust has no money.

10:56:52 18 Q. The lack of assets?

10:56:55 19 A. The lack of assets, yes, sir.

10:56:56 20 Q. All right. We'll talk about that in a minute,
10:56:58 21 but --

10:56:59 22 A. Those are the main, the general gist of the
10:57:03 23 conversation.

10:57:48 24 Q. Before you accepted the position as trustee,
10:57:09 25 you had already discussed with Sagi Genger how to

10:57:14 1 prosecute what became the Recovery Effort litigation;
10:57:19 2 right?

10:57:20 3 A. I had discussed with Sagi many different things
10:57:30 4 concerning the case, going all of the way back to the
10:57:35 5 divorce in 2004.

10:57:38 6 So I'm certain some of that -- to the best
10:57:43 7 of my recollection, I have no recollection of that
10:57:46 8 happening. Based on what I know, I would assume some
10:57:49 9 of that did happen.

10:57:52 10 MR. POLLOCK: Mr. Oldner, he's not
10:57:55 11 asking for you to assume or speculate.

10:57:58 12 A. Okay. Then I don't know. I can't remember
10:58:00 13 that.

10:58:01 14 Q. I want to make sure I understand your answer,
10:58:03 15 without Mr. Pollock interjecting his interpretation.
10:58:07 16 My sense from your answer, and please correct me if
10:58:11 17 I'm incorrect, but my sense is what you just said is
10:58:14 18 you must have discussed something along the lines of
10:58:17 19 what became the Recovery Effort action, but you don't
10:58:21 20 have a clear memory of that. Is that right?

10:58:24 21 A. We discussed so many cases that would lead up
10:58:26 22 to that, I do not have a clear memory. Needless to
10:58:30 23 say, this easily becomes a, a very large, not that --
10:58:38 24 it becomes difficult to remember which part of it
10:58:42 25 leads to what.

10:58:43 1 Q. When, when was recovery action created -- I'm
10:58:47 2 sorry -- Recovery Effort. Recovery Effort, when was
10:58:50 3 that created?

10:58:52 4 A. Recovery Effort was created in early June of
10:58:55 5 2019, June the 2nd or June the 4th.

10:58:59 6 Q. Who created it?

10:59:01 7 A. The previous trustee.

10:59:04 8 Q. How do you know that?

10:59:35 9 A. Who else would have the ability to create it?

10:59:13 10 Q. Are you just assuming it?

10:59:16 11 A. I am assuming it.

10:59:17 12 Q. You are assuming it?

10:59:18 13 A. Yes, sir, I'm assuming it.

10:59:20 14 MR. POLLOCK: Mr. Oldner, he's not
10:59:21 15 asking for you to assume. He's asking for
10:59:22 16 --

10:59:22 17 THE WITNESS: All right.

10:59:23 18 MR. BOWEN: I just asked him if he was
10:59:24 19 assuming that, and he said yes.

10:59:26 20 Mr. Pollock, please cease and desist from
10:59:29 21 interjecting and obstructing my line of
10:59:32 22 questioning. It is completely improper.

10:59:34 23 I have said this a hundred times,
10:59:36 24 probably, or close to that. So please
10:59:38 25 stop.

10:59:38 1 BY MR. BOWEN:

10:59:38 2 Q. Mr. Oldner, you were just assuming that; is
10:59:41 3 that correct?

10:59:42 4 A. That is correct. I have no actual knowledge.

10:59:48 5 Q. When did you first learn about Recovery Effort,
10:59:50 6 was it before you accepted the position as trustee or
10:59:55 7 afterward?

11:00:03 8 A. I don't remember. I have an email concerning
11:00:05 9 the formation. I do not know if that was before or
11:00:10 10 right at that time.

11:00:42 11 Q. Now if I remember what you said this morning,
11:00:18 12 and if I'm misstating it, please correct me. I don't
11:00:22 13 mean to, to put words in your mouth. I'm asking --
11:00:24 14 I'm trying to get us back to a topic we touched on
11:00:27 15 earlier.

11:00:28 16 But my understanding is that you learned
11:00:30 17 from Robin Rodriguez in one of the earliest
11:00:32 18 conversations you had about the trust that there was
11:00:35 19 a claim that the trust needed to bring, a lawsuit, in
11:00:38 20 order to recover \$32.3 million that belonged to the
11:00:43 21 trust. Is that right?

11:00:44 22 A. Actually, I believe what I said is that I
11:00:50 23 learned about money that was taken through a
11:00:55 24 derivative action in another lawsuit that should have
11:01:01 25 been the trust's money.

11:01:03 1 Q. And you got that understanding from Mr.
11:01:05 2 Rodriguez?
11:01:08 3 A. Initially, yes.
11:01:09 4 Q. And then you discussed that with Sagi Genger?
11:01:12 5 A. I did.
11:01:50 6 Q. And you never discussed it with anyone else,
11:01:16 7 other than lawyers?
11:01:17 8 A. Other than lawyers.
11:01:56 9 Q. And you never discussed it with Dalia Genger's
11:01:23 10 lawyers; right?
11:01:29 11 A. Not to the best of my understanding. I don't
11:01:32 12 know who all of Dalia's lawyers are, but no, to the
11:01:32 13 best of my understanding, I have not.
11:02:07 14 Q. And you made an independent assessment of
11:01:40 15 whether the trust had a, indeed had a claim to the
11:01:45 16 \$32 million that resulted from what you're calling
11:01:48 17 the derivative action; correct?
11:02:26 18 A. Yes, sir.
11:01:51 19 Q. And you have no legal training; right?
11:02:30 20 A. I have no legal training.
11:01:56 21 Q. But you did your best in reading the
11:01:58 22 decisions --
11:01:59 23 A. I did.
11:02:00 24 Q. -- to come to an, to come to that
11:02:00 25 understanding; is that right?

11:02:40 1 A. I did.

11:02:41 2 Q. And the decisions that you were, that you read

11:02:07 3 you were asked to read by Sagi Genger; correct?

11:02:13 4 A. No.

11:02:13 5 Q. How did you find the decisions?

11:02:15 6 A. Through -- some of them at Sagi's

11:02:20 7 recommendation, some of them through counsel.

11:02:24 8 Q. When you say "counsel," you mean Mr. Cullen?

11:02:26 9 A. Pardon me, sir?

11:02:27 10 Q. When you say "counsel," do you mean Mr. Cullen?

11:02:31 11 A. I mean Mr. Cullen.

11:02:32 12 Q. And who paid --

11:02:32 13 A. And prior to, prior to me being trustee,

11:02:35 14 Mr. Cullen, yes. Mr. Cullen --

11:02:39 15 Q. Who paid, who paid Mr. Cullen's fees for that

11:02:41 16 legal advice?

11:02:42 17 A. For that legal advice, that legal advice was

11:02:45 18 free on the front end, because I had used Mr. Cullen

11:02:48 19 for quite a while, and I was asking him about whether

11:02:51 20 or not I should take the --

11:02:54 21 MR. POLLOCK: You know what, let me

11:02:56 22 pause you. I don't think that you should

11:02:58 23 be testifying as to what you were asking

11:02:59 24 Mister, the legal advice that you were

11:03:01 25 seeking from Mr. Cullen.

11:03:04 1 MR. BOWEN: Again, you're obstructing
11:03:06 2 this deposition, and you're interfering
11:03:09 3 with this line of questioning.

11:03:10 4 MR. POLLOCK: I'm preserving --

11:03:11 5 MR. BOWEN: If you're interposing an
11:03:11 6 objection, please state it briefly and
11:03:14 7 succinctly and not past the word
11:03:16 8 "Objection."

11:03:16 9 MR. POLLOCK: I object on the grounds
11:03:17 10 of privilege, to the extent that this calls
11:03:20 11 for privileged communications with Mr.
11:03:21 12 Oldner, with Mr. Cullen, as to the advice
11:03:24 13 that Mr. Oldner was seeking from
11:03:25 14 Mr. Cullen. And I'm sure that Mr. Cullen
11:03:30 15 joins in that direction.

11:03:33 16 MR. CULLEN: I do.

11:03:34 17 MR. HERSCHMANN: This is Eric
11:03:34 18 Herschmann. This is talking about fees,
11:03:37 19 and I'm certain you know this, Mr. Pollock,
11:03:40 20 but the payment of legal fees is not
11:03:42 21 privileged.

11:03:44 22 So if you want to instruct him on that
11:03:46 23 basis in response to the question, you can
11:03:50 24 do it at your own peril.

11:03:51 25 MR. POLLOCK: Mr. Herschmann, he was

11:03:53 1 beginning to testify as to the legal advice
11:03:55 2 that he sought from Mr. Cullen. He had
11:03:57 3 answered the question about fees already.

11:04:00 4 MR. HERSCHMANN: No, he said --

11:04:00 5 BY MR. BOWEN:

11:04:00 6 Q. Mr. Oldner, please answer the question.

11:04:04 7 MR. BOWEN: We're not going to debate
11:04:04 8 this on the record. I am going forward
11:04:05 9 with my questioning. If you speak over me,
11:04:08 10 then, then this is only going to take that
11:04:10 11 much longer. So, Mr. Pollock, please
11:04:10 12 desist.

11:04:10 13 MR. POLLOCK: Please continue with
11:04:10 14 your questioning.

11:04:10 15 BY MR. BOWEN:

11:04:14 16 Q. Mr. Oldner, I'm not asking you to get into
11:04:17 17 communications with your lawyer, Mr. Cullen, or
11:04:20 18 anyone else.

11:04:22 19 A. Yes, sir.

11:04:55 20 Q. Is Mr. Cullen retained by the trust?

11:04:59 21 A. Mr. Cullen is now retained by REI.

11:04:31 22 Q. And REI --

11:04:31 23 A. And by me.

11:04:32 24 Q. -- not retained --

11:04:33 25 A. And by me.

11:04:36 1 Q. -- not retained by you in your capacity as
11:04:39 2 trustee?

11:04:40 3 A. He is retained by me to advise me in my
11:04:45 4 capacity as trustee, but he is not retained by the
11:04:48 5 trust.

11:04:50 6 Q. And who pays his fees in advising you in your
11:04:53 7 capacity as trustee?

11:04:55 8 A. I do.

11:04:58 9 Q. And where does that money come from, your own
11:05:01 10 personal money?

11:05:35 11 A. No. It comes from money I borrow to fund
11:05:04 12 Recovery Effort Inc.

11:05:40 13 Q. And Mr. Cullen also is retained by Recovery
11:05:17 14 Effort Inc.?

11:05:19 15 A. Yes.

11:05:19 16 Q. And you caused that to occur; correct?

11:05:50 17 A. I did.

11:05:22 18 Q. And you did that in your capacity as the
11:05:24 19 principal for Recovery Effort Inc.?

11:05:56 20 A. I did.

11:05:29 21 Q. Recovery Effort Inc. is wholly owned by the
11:05:33 22 trust?

11:05:33 23 A. It is wholly owned by the trust.

11:05:35 24 Q. But you didn't create Recovery Effort Inc.;
11:05:38 25 right?

11:05:39 1 A. I did not.

11:05:40 2 Q. It was already in existence when you took the
11:05:43 3 position as trustee; correct?

11:05:44 4 A. It was.

11:06:18 5 Q. Now in your meeting with Sagi Genger, either
11:05:49 6 directly in person during that three-hour meeting on
11:05:52 7 June 14 or in any telephone conversations, or email
11:05:55 8 conversations, or any other mode of communication you
11:05:58 9 had with him, did you tell him that you were going to
11:06:01 10 prosecute the Recovery Effort action before you were
11:06:07 11 appointed as trustee?

11:06:11 12 A. Not that I recall.

11:06:50 13 Q. Did you have some understanding that that was a
11:06:17 14 requirement for the job?

11:06:21 15 A. Did I have an understanding that that was the
11:06:26 16 requirement for getting the job?

11:06:30 17 Q. The job as the successor trustee, yes.

11:06:33 18 A. No.

11:07:11 19 Q. Did you tell Sagi Genger before you were
11:06:40 20 appointed as successor trustee that you intended to
11:06:43 21 prosecute the Recovery Effort action on behalf of the
11:06:47 22 trust?

11:06:48 23 A. Not that I recall.

11:06:50 24 Q. Okay. So what else was discussed with Mr.
11:06:52 25 Genger before you signed the, the transfer document?

11:07:00 1 A. I mainly listened to as much information as he
11:07:04 2 could give me to stitch together the history of the
11:07:09 3 case.

11:07:39 4 Q. Did he show you a draft complaint on behalf of
11:07:13 5 Manhattan Safety and Recovery Effort?

11:07:17 6 A. He did not.

11:07:18 7 Q. When was that Complaint filed after you were
11:07:20 8 appointed as trustee?

11:07:23 9 A. 6-17.

11:07:24 10 Q. June 17th?

11:07:25 11 A. Yes, sir.

11:07:54 12 Q. You were appointed on June 14th?

11:07:29 13 A. Yes, sir.

11:07:58 14 Q. When did you first see that Complaint?

11:07:33 15 MR. POLLOCK: Mr. Bowen, and I have an
11:07:35 16 objection on another ground now. As you
11:07:37 17 know, you are a defendant, a nominal
11:07:39 18 defendant, but a defendant in that lawsuit,
11:07:42 19 and we specifically raised with Judge
11:07:44 20 Garrity the concern that you appear to be
11:07:47 21 seeking discovery as to the MSM action.

11:07:52 22 We raised that concern, and we got a
11:07:54 23 clear direction from Judge Garrity, and,
11:07:56 24 nonetheless, you are persistent in asking
11:07:59 25 questions that appear to be directly

11:08:01 1 related to the, not just appear to be, but
11:08:03 2 actually are related directly to the MSM
11:08:05 3 action.

11:08:06 4 And so that we can avoid going to
11:08:08 5 Judge Garrity on this to repeat what he has
11:08:12 6 already directed, I would respectfully ask
11:08:15 7 that you do not seek discovery on the MSM
11:08:17 8 action. In fact, there is a pending motion
11:08:20 9 on exactly that, which is not at issue
11:08:24 10 here.

11:08:29 11 MR. BOWEN: Please stop with the
11:08:30 12 speaking objections.

11:08:30 13 BY MR. BOWEN:

11:08:31 14 Q. Mr. Oldner, please answer the question, and
11:08:33 15 I'll repeat it.

11:08:34 16 A. Thank you.

11:08:35 17 Q. The question is when did you see the Complaint
11:08:39 18 that was filed in the Recovery Effort action?

11:08:44 19 A. To know the exact date, I would have to check
11:08:47 20 my email, but it was over that weekend, either the
11:08:49 21 14th, the 15th, or the 16th.

11:08:52 22 Q. Who sent it to you?

11:08:54 23 A. Watt Tale (phonetic) David Cohen.

11:09:51 24 Q. Now when, when did Watt -- I forget the name of
11:09:51 25 that firm. It's like Walden Macht or something?

11:09:51 1 A. That's it, Walden Macht. Sorry. There are
11:09:11 2 enough law firms for me to get it confused.

11:09:14 3 Q. When did you retain them?

11:09:16 4 A. That weekend.

11:10:00 5 Q. And how did you choose them?

11:09:21 6 A. They had already been selected by Robin, and in
11:09:25 7 the part of the suit where we were joint with
11:09:33 8 Manhattan Safety Maine, I, I went to his lawyer for
11:09:37 9 that.

11:10:13 10 Q. So you didn't select that lawyer?

11:10:14 11 A. I did not select that attorney, that is
11:09:46 12 correct.

11:10:17 13 Q. And you had never met them before this lawsuit
11:09:54 14 was filed?

11:09:55 15 A. I had never met him before this lawsuit was
11:09:57 16 filed.

11:09:57 17 Q. And by "this lawsuit," I mean the Recovery
11:09:59 18 Effort action; correct?

11:10:02 19 A. The MSM-Recovery Effort combined action, yes.

11:10:07 20 Q. Did you discuss with any lawyers at Walden
11:10:08 21 Macht that Complaint before it was filed?

11:10:13 22 MR. POLLOCK: And I would caution you
11:10:14 23 only to give a yes-no answer. He is not
11:10:16 24 seeking the actual discussions.

11:10:18 25 Q. That's correct.

11:10:20 1 A. Define "discussion," please.

11:10:24 2 Q. Emails, telephone.

11:10:26 3 A. Yes.

11:11:03 4 Q. What, what was the form of that communication?

11:10:33 5 A. Email for sure. I believe telephone, but I

11:10:37 6 cannot be sure, and those would have been the only

11:10:41 7 two possibilities.

11:11:20 8 Q. Did you have -- don't, don't -- I don't want to

11:10:46 9 ask you what you've discussed with your lawyers, but

11:10:48 10 did you have questions?

11:10:53 11 A. Did I have questions?

11:10:54 12 Q. Yes.

11:10:55 13 A. I read the filing. The filing was consistent

11:10:57 14 with my understanding.

11:11:37 15 Q. And your understanding is based on the

11:11:06 16 documents that you reviewed in the preceding two

11:11:09 17 months; correct?

11:11:10 18 A. Yes, and discussions with counsel.

11:11:46 19 Q. Who pays or who paid Walden Macht's fees?

11:11:21 20 A. That is money -- half of it is paid by

11:11:24 21 Manhattan Safety Maine. Half of it is paid by

11:11:27 22 Recovery Effort Inc.

11:11:57 23 Q. And Recovery Effort Inc. has no assets;

11:11:34 24 correct?

11:11:35 25 A. Recovery Effort Inc. has no assets.

11:11:38 1 Q. And that -- but you borrowed money, or Recovery
11:11:40 2 Effort Inc. borrowed money; is that right?

11:11:43 3 A. Recovery Effort Inc. borrows money, yes, sir.

11:11:46 4 Q. When you went to the proceeding in Austin,
11:11:50 5 Texas, who hired the lawyers for the trust in that
11:11:54 6 proceeding?

11:12:34 7 A. I did.

11:12:35 8 Q. How did you pick those lawyers?

11:11:59 9 A. I met with three, two that I remember
11:12:03 10 distinctly. And Jay Ong, who I ended up hiring, was
11:12:12 11 lights-out bright. He was very impressive, very
11:12:15 12 knowledgeable and could also explain to me exactly
11:12:18 13 what was happening in terms that were easy for a
11:12:23 14 layman to understand, so that I could execute my
11:12:26 15 responsibilities to the best of my ability.

11:12:35 16 Q. And he was selected as somebody to represent
11:12:37 17 the trust by Sagi Genger?

11:12:39 18 A. He was -- no, sir. I just told you he was
11:12:42 19 selected by me.

11:12:43 20 Q. Well, you, you were referred to him as a
11:12:45 21 potential candidate by Sagi Genger; is that right?

11:13:26 22 A. I met Sagi and John Dellaportas in Austin,
11:12:56 23 Texas. We met with several lawyers.

11:13:35 24 Q. But they're the ones who lined up the meetings
11:13:05 25 for you to meet the people, correct, John Dellaportas

11:13:07 1 and Mr. Sagi Genger; right?

11:13:10 2 A. It would be impossible for me to say whether
11:13:14 3 Sagi had lined them up or whether John Dellaportas
11:13:17 4 had lined them up, but there were multiple lawyers
11:13:20 5 for me to choose from.

11:13:22 6 Q. But either Mr. Dellaportas or Mr. Sagi Genger
11:13:23 7 lined them up, one or the other; right?

11:13:27 8 A. Yes, sir. I did not, I did not pick them out.

11:13:31 9 Q. And, and other than Mr. Ong, who you hired for
11:13:34 10 the trust in, in Austin, who else did you meet with,
11:13:38 11 what other lawyers?

11:14:06 12 A. I, I do not remember the other lawyers. I
11:13:42 13 remember one of them. I can tell you he was a
11:13:46 14 graduate of the University of Texas in 1984, but I, I
11:13:50 15 don't remember his name.

11:13:51 16 Q. Do you have any information related to them?

11:14:43 17 A. At this time?

11:13:57 18 Q. Well, yes, in your office, or wherever, like a
11:14:00 19 business card, or an email saying, "Thanks for the
11:14:02 20 meeting"?

11:14:03 21 A. I don't remember an email. I, I had phone
11:14:06 22 calls. I, I could find the name, I would imagine,
11:14:12 23 and I believe I had a business card at one time.

11:15:02 24 Q. Now -- so you personally had no role in
11:14:36 25 drafting the Recovery Effort Complaint; right?

11:14:42 1 A. I did not.

11:15:10 2 Q. And --

11:15:11 3 A. As an, as an attorney, is that what you're
11:14:47 4 asking?

11:14:48 5 Q. As anybody. As a -- as the trustee, you had no
11:14:51 6 role in drafting it?

11:14:52 7 A. Did, did I approve the draft as it was filed,
11:14:56 8 or --

11:14:57 9 Q. No. Did you have a role in drafting it? Did
11:14:59 10 you say, "I want this language here," or, "I want
11:15:02 11 this topic addressed. I want to say X. I want to
11:15:05 12 say Y"?

11:15:06 13 MR. POLLOCK: Mr. Bowen, I'm concerned
11:15:07 14 that you're asking for his communications
11:15:09 15 that he had with counsel with respect to
11:15:11 16 the draft of the Complaint in the MSM
11:15:13 17 action.

11:15:14 18 Q. I'm not asking for your communications with
11:15:16 19 lawyers. I want to know if in your mind, in your
11:15:19 20 understanding, you had a role in drafting it.

11:15:57 21 A. I had a role in accepting it, but the lawyers
11:15:26 22 drafted it.

11:16:02 23 Q. All right. So other than approving it, did you
11:15:30 24 have any other input into it?

11:15:32 25 A. In that particular draft, no.

11:15:38 1 Q. When was that draft, or how much before
11:15:43 2 June 17th had that document been drafted, to your
11:15:47 3 understanding?

11:16:19 4 A. As I said, I saw it either on June 14th,
11:15:53 5 June 15th, or June 16th.

11:15:56 6 Q. But --

11:15:56 7 A. I am not sure.

11:15:58 8 Q. -- do you know how much before then it was, it
11:16:00 9 was drafted?

11:16:01 10 A. I have no idea.

11:16:02 11 Q. Was that one of the documents --

11:16:02 12 A. I have no knowledge.

11:16:03 13 Q. Was that one of the documents that Sagi Genger
11:16:07 14 showed to you before you became the successor
11:16:09 15 trustee?

11:16:12 16 A. As I've said, Sagi Genger showed me no
11:16:15 17 documents.

11:16:52 18 Q. Well, he showed you the transfer, the successor
11:16:21 19 trustee agreement; right?

11:16:59 20 A. He showed me -- the documents were not related
11:16:26 21 to my transfer. I, I -- he gave me no court cases.
11:16:30 22 No, that was not one.

11:17:06 23 Q. But you discussed what that action would be?

11:16:40 24 A. We discussed what particular actions could be
11:16:43 25 taken. Did we discuss exactly the case, as I saw it,

11:16:48 1 no, we did not.

11:17:27 2 Q. Well, you discussed Recovery Effort; right?

11:17:31 3 A. Yes, we did, that I would become the director
11:17:01 4 of Recovery Effort.

11:17:02 5 Q. And you knew that before you signed on as
11:17:05 6 trustee; correct?

11:17:41 7 A. I did.

11:17:42 8 Q. And you say that you and Sagi discussed what
11:17:12 9 actions could be taken. What did you discuss?

11:17:15 10 A. I -- the conversation was three hours of
11:17:22 11 intense background into the Genger estate. It would
11:17:26 12 be impossible for me to recall what was said then and
11:17:30 13 what was said later.

11:17:32 14 Q. I understand why you say that, but I -- let me
11:17:34 15 rephrase the question, because I'm not asking if
11:17:34 16 you --

11:17:35 17 A. Sure.

11:17:35 18 Q. -- remember everything. I just want you to
11:17:37 19 give us your best testimony about what Mr. Sagi
11:17:41 20 Genger said and what you said about what actions
11:17:44 21 could be taken by the trust before you signed the
11:17:47 22 document becoming the trustee.

11:17:49 23 A. I, I do not recall.

11:18:30 24 Q. But you do know that one of those possibilities
11:17:58 25 involved Recovery Effort?

11:18:00 1 A. Yes.

11:18:48 2 Q. And you knew before you became trustee that you
11:18:08 3 were also going to accept the chief managerial or
11:18:12 4 principal role in Recovery Effort; right?

11:18:14 5 A. Yes, sir.

11:18:16 6 Q. So what -- and you knew also that the trust had
11:18:20 7 no assets?

11:18:21 8 A. Yes, sir.

11:18:24 9 Q. You knew the trust was supposedly in debt?

11:18:27 10 A. Yes.

11:18:28 11 Q. What was the amount, the magnitude of the debt,
11:18:30 12 as far as you understood?

11:18:31 13 A. At that time?

11:18:32 14 Q. Yes.

11:18:32 15 A. I'm honestly trying to recall, and I would have
11:18:47 16 to give you a guess. If you want a guess, I will
11:18:49 17 give you a guess, but it would be a guess.

11:18:52 18 Q. Okay. You can guess.

11:18:53 19 A. Approximately --

11:18:54 20 Q. Understanding it's a guess.

11:18:55 21 A. Approximately \$20 million. That's a guess.

11:19:41 22 Q. Who were the creditors of the trust?

11:19:02 23 A. The creditors of the trust were Manhattan
11:19:06 24 Safety Maine and Sagi Genger.

11:19:52 25 Q. Manhattan Safety Maine is owned by Robin

11:19:14 1 Rodriguez; right?

11:19:16 2 A. I -- yes.

11:19:20 3 Q. Yes?

11:19:21 4 A. Yes.

11:19:23 5 Q. So before you took the position as trustee, you
11:19:26 6 knew that you were taking on responsibilities for a
11:19:30 7 trust that was \$20 million in debt to, approximately,
11:19:35 8 roughly speaking, to Sagi Genger and to Robin
11:19:40 9 Rodriguez, or entities that they controlled and
11:19:44 10 owned; right?

11:19:45 11 A. The -- may we have a break after I answer this
11:19:50 12 question, please?

11:19:52 13 Q. Sure.

11:19:53 14 MR. POLLOCK: You know what, I would
11:19:54 15 be happy to have a bio break as long as you
11:19:58 16 don't mind, Mr. Oldner.

11:19:59 17 THE WITNESS: Pardon me?

11:19:59 18 MR. POLLOCK: I'd be happy to have a
11:19:59 19 bio break, as long as you don't mind, or
11:20:01 20 Mr. Bowen, but answer the question.

11:20:03 21 MR. BOWEN: What's a bio break?

11:20:05 22 MR. POLLOCK: I have to go to the
11:20:07 23 men's room. Thank you.

11:20:08 24 MR. BOWEN: Oh, sorry. I thought that
11:20:09 25 was some Zoom terminology that I'd never

11:20:13 1 heard of before.

11:20:14 2 THE WITNESS: A bio break, a biology
11:20:16 3 break.

11:20:18 4 MR. BOWEN: Yeah. It's, it's an
11:20:18 5 analogue problem, not a digital problem.

11:20:18 6 MR. HERSCHMANN: Can you read back the
11:20:18 7 question?

11:20:18 8 MR. BOWEN: Yeah, can we have the
11:20:18 9 question read back, please --

11:20:18 10 THE WITNESS: Thank you.

11:20:18 11 MR. BOWEN: -- and let Mr. Oldner
11:20:18 12 answer the question, and then we'll take a
11:20:18 13 break.

11:20:18 14 THE WITNESS: Thank you.

11:20:18 15 COURT REPORTER: Give me one second to
11:20:18 16 get back.

11:20:18 17 THE WITNESS: Take your time. It
11:20:18 18 looks like we're going to be here all day
11:20:18 19 anyway.

11:20:18 20 (Court reporter read back the question.)

11:20:18 21 THE WITNESS: Yes.

11:21:06 22 MR. BOWEN: Okay. Let's take a break.
11:21:07 23 We'll go off the record.

11:21:09 24 (Sixteen-minute break.)

11:39:05 1 BY MR. BOWEN:

11:39:05 2 Q. Okay. Go ahead, Mr. Oldner.

11:39:06 3 A. Number one, I want to correct something from
11:39:07 4 earlier where I completely got something wrong, but I
11:39:08 5 also want to give you the reason and ask you to help
11:39:25 6 me remember this, along with anybody else.

11:39:29 7 I have a health condition that requires
11:39:30 8 that I move around about every hour. Whenever I
11:39:33 9 don't -- really every 50 minutes would be better. I
11:39:37 10 do this at home. I've done this for years.

11:39:39 11 Whenever I don't, I become foggy. I don't
11:39:42 12 think well, and I am making assumptions. In one of
11:39:44 13 my assumptions I put two unrelated things together.
11:39:48 14 My apologies.

11:39:50 15 The trust does not owe \$20 million. The
11:39:53 16 trust has -- the trust has one note that it owes
11:39:54 17 money on; okay?

11:39:58 18 So I was -- whenever I told you I was
11:40:01 19 guessing, I was completely guessing. I was
11:40:03 20 completely wrong, and I apologize for --

11:40:05 21 Q. Who corrected --

11:40:05 22 A. -- that ridiculous guessing.

11:40:08 23 Q. Who told you --

11:40:09 24 A. Pardon me?

11:40:10 25 Q. Who corrected you or pointed out that you had

11:40:13 1 misspoken?

11:40:14 2 A. I talked to my attorneys, and --

11:40:16 3 Q. Was it Sagi Genger?

11:40:16 4 A. Pardon me?

11:40:16 5 Q. Was it Sagi Genger that, that contacted you to

11:40:21 6 say that you had misspoken?

11:40:24 7 A. No. I talked to Adam Pollock and Tim Cullen.

11:40:28 8 Q. Did you have, did you have any communications

11:40:30 9 with Sagi Genger today, at any time today?

11:40:36 10 A. Early this morning.

11:40:37 11 Q. Before the deposition, or during the

11:40:38 12 deposition?

11:40:39 13 A. Before the deposition.

11:41:10 14 Q. And you haven't talked to him, or got an email,

11:40:43 15 or text from him during the deposition?

11:41:15 16 A. Not will I, no, sir.

11:40:48 17 Q. Nor, nor will you?

11:40:50 18 A. Yes, I will not.

11:40:52 19 Q. What do you mean --

11:40:52 20 A. During the deposition I'm not checking --

11:40:54 21 Q. -- by that?

11:40:54 22 A. No, I won't -- no, I'm not doing anything in

11:40:57 23 this deposition.

11:40:57 24 Q. All right. You understand that would be

11:40:59 25 improper; right?

11:41:31 1 A. Yes, sir, I do.

11:41:01 2 Q. Okay.

11:41:01 3 A. That's why I am pointing out that that's -- not
11:41:04 4 only is that not happening, it will not happen.

11:41:07 5 MR. POLLOCK: Mr. Oldner --

11:41:08 6 Q. Okay. Did Sagi Genger discuss with you what
11:41:11 7 you should testify to, or what you should say in your
11:41:14 8 deposition, at any point in time?

11:41:16 9 A. No.

11:41:53 10 Q. No?

11:41:53 11 A. No.

11:41:53 12 Q. Did he, did he talk to you about the fact you
11:41:19 13 were being deposed today?

11:41:21 14 A. Yes.

11:41:22 15 Q. What did he say?

11:42:02 16 A. When we talked this morning?

11:41:26 17 Q. Yes.

11:41:26 18 A. That, that barbecue sauce in, in Arkansas is
11:41:32 19 really good.

11:42:07 20 Q. Is Sagi Genger in Arkansas?

11:42:12 21 A. Pardon me?

11:42:12 22 Q. Is Sagi Genger in Arkansas?

11:42:12 23 A. No.

11:41:40 24 Q. Where is he --

11:41:44 25 A. Sagi Genger is someplace -- I don't know where

11:41:47 1 Sagi Genger is.

11:41:48 2 Q. Okay.

11:41:49 3 A. I really don't.

11:41:50 4 Q. When you, when you were talking to him on the
11:41:52 5 phone, the only thing you talked about was that

11:41:55 6 barbecue sauce is really good in Arkansas?

11:41:59 7 A. Yes, and that he didn't much care for

11:42:01 8 Defendants in this case, and that was pretty much it.

11:42:05 9 Q. What did he say about the Defendants in the
11:42:06 10 case?

11:42:07 11 A. That really needs to stay personal. It, it --

11:42:10 12 Q. No, it doesn't.

11:42:12 13 A. It doesn't help.

11:42:13 14 Q. You can say it.

11:42:14 15 A. No, sir. Please. It's just rude.

11:42:16 16 Q. I'm sorry. Yeah, I -- the relationship with
11:42:18 17 Sagi Genger is very important in this case. I need
11:42:21 18 you to tell me what he told you about the Defendants
11:42:24 19 in this case.

11:42:26 20 A. I do not want to do this. He said that Eric
11:42:28 21 Herschmann is an asshole, and I can quote him on
11:42:33 22 that. Those were his exact words.

11:42:35 23 Q. What did he say about me?

11:42:37 24 A. Absolutely nothing about you.

11:43:22 25 Q. What about any other Defendant in the case?

11:42:41 1 A. Nothing about anybody else.

11:42:42 2 Q. How about the other lawyers in the case?

11:42:45 3 A. Nothing about any other lawyers.

11:42:46 4 Q. What did Mr. Sagi Genger say to you about

11:42:51 5 Mr. Herschmann, other than saying, He's an asshole,

11:42:55 6 and you can quote me on that?

11:42:58 7 A. That's it.

11:42:59 8 Q. Well, what did he mean, to your understanding?

11:43:45 9 A. It's, it's not funny. I'm not laughing about

11:43:15 10 it. It's just I, I, I think he has a very low

11:43:23 11 opinion of Mr. Herschmann.

11:43:25 12 Q. What did he say to give you that impression?

11:43:29 13 A. That Eric Herschmann is an asshole, and you can

11:43:33 14 quote me on that. That kind of gives that

11:43:36 15 impression. It's not what I want to talk about.

11:43:39 16 Q. But in addition --

11:43:42 17 A. Sorry.

11:43:42 18 Q. In addition to that, did he say anything else?

11:43:44 19 A. No.

11:44:18 20 Q. Was he warning you that Eric Herschmann might

11:43:47 21 have questions for you?

11:43:49 22 A. No.

11:44:22 23 Q. Did he say, If Eric Herschmann asks you

11:43:52 24 questions, this is how you deal with those questions?

11:44:28 25 A. No, he did not.

11:43:56 1 Q. Did he give you examples of, of his reason for
11:44:01 2 saying that Eric Herschmann is an asshole?

11:44:05 3 A. He did not.

11:44:06 4 Q. Did you have any understanding about why he
11:44:08 5 said that?

11:44:09 6 A. I do not.

11:44:52 7 Q. Is this the first day he ever said anything to
11:44:18 8 you about Eric Herschmann, or did he talk to you
11:44:20 9 about Eric Herschmann in the past?

11:44:22 10 A. He has talked to me about Eric Herschmann in
11:44:25 11 the past.

11:44:26 12 Q. What did he say before?

11:44:27 13 A. I don't remember.

11:45:12 14 Q. Was it negative?

11:44:34 15 A. Mostly.

11:44:42 16 Q. I'm sorry?

11:44:43 17 A. Mostly.

11:44:43 18 Q. Mostly?

11:44:44 19 A. Yes, sir.

11:44:44 20 Q. What, what did he say that was not negative?

11:45:24 21 A. That his defense of Donald Trump on the Senate
11:44:51 22 floor was excellent.

11:45:33 23 Q. Anything else?

11:44:56 24 A. Not that I can recall.

11:44:59 25 Q. What did he say that was negative?

11:45:40 1 A. Just general -- nothing I can recall
11:45:06 2 specifically. I just have a negative overall --
11:45:11 3 Q. What did he tell you about -- I'm sorry. I was
11:45:12 4 speaking over you.
11:45:13 5 A. I'm sorry. It's a negative overall impression
11:45:17 6 that I get from him.
11:45:23 7 Q. And you can't give us any other details about
11:45:27 8 what Sagi Genger was telling you to give you that
11:45:33 9 negative overall impression?
11:45:35 10 A. No, sir. I would be doing the same thing that
11:45:38 11 I did earlier when I made a guess, which was
11:45:41 12 completely off base, so no, I can't.
11:45:47 13 MR. HERSCHMANN: It's Eric Herschmann,
11:45:48 14 just for the record.
11:45:51 15 THE WITNESS: Hello, Mr. Herschmann.
11:45:53 16 MR. HERSCHMANN: Nice to see you, Mr.
11:45:53 17 Oldner.
11:45:53 18 THE WITNESS: Nice to meet you.
11:46:30 19 MR. HERSCHMANN: It would be -- it is
11:45:57 20 not a guess when you live through something
11:45:58 21 and you're told something.
11:46:01 22 I ask that the witness answer the
11:46:03 23 question as to everything that he was told
11:46:05 24 by Sagi Genger regarding me.

11:46:08 1 BY MR. BOWEN:

11:46:09 2 Q. To the best of your recollection, sir, is there
11:46:12 3 any way you can remember it --

11:46:16 4 MR. POLLOCK: I will --

11:46:16 5 Q. -- as it's --

11:46:17 6 MR. POLLOCK: -- restate my objection,
11:46:17 7 now that we've come back from the break,
11:46:20 8 that none of this has anything to do with
11:46:22 9 the pending Motion to Dismiss. Go ahead.

11:47:00 10 Q. Mr. Oldner --

11:46:31 11 A. Yes.

11:46:31 12 Q. -- the question to you, sir, subject to the
11:46:33 13 objection of Mr. Pollock --

11:47:09 14 A. Yes.

11:46:36 15 Q. -- is please state everything that Sagi Genger
11:46:38 16 told you about Eric Herschmann, to the best that,
11:46:42 17 that you can.

11:46:43 18 A. The two things that stand out I've already told
11:46:47 19 you, one positive, one negative. The rest of it I
11:46:50 20 cannot speak to with any certainty. It would involve
11:46:57 21 guessing.

11:47:31 22 Q. Okay. Well, what would your guess be that
11:47:03 23 indicated a negative view of Mr. Herschmann --

11:47:07 24 MR. POLLOCK: Objection.

11:47:08 25 Q. -- understanding it's a guess.

11:47:10 1 MR. POLLOCK: Objection; you're
11:47:11 2 literally asking the witness to guess.

11:47:15 3 MR. HERSCHMANN: Mr. Pollock, I'm
11:47:16 4 going to give you the admonition, because
11:47:17 5 I'm more than happy to call Judge Garrity
11:47:17 6 on this, so I ask you to stop.

11:47:21 7 He said, "I'd have to guess," based on
11:47:21 8 his experiences in a conversation. It's
11:47:24 9 not a guess when you lived through it.
11:47:25 10 It's your recollection. But you have an
11:47:28 11 objection. Let's get the answer to the
11:47:31 12 question.

11:47:31 13 MR. POLLOCK: You are welcome to call
11:47:32 14 Judge Garrity and tell him that Mr. Bowen
11:47:33 15 is literally asking him to guess during the
11:47:37 16 deposition.

11:47:38 17 MR. HERSCHMANN: Mr. Pollock, Mr.
11:47:39 18 Pollock, you're done with this. You have a
11:47:41 19 standing objection. Let's get the answer
11:47:43 20 to the question.

11:47:45 21 BY MR. BOWEN:

11:47:45 22 Q. Mr. Oldner, I'll, I'll restate the question.

11:47:48 23 Do the best that you can and please tell us

11:47:50 24 everything that Sagi Genger said about Eric

11:47:53 25 Herschmann, even if it's a guess. We understand that

11:47:56 1 what you're saying now is just a guess. Go ahead.

11:47:58 2 MR. POLLOCK: Objection; asked and

11:47:59 3 answered.

11:48:01 4 A. Mr. Bowen, very, very respectfully on my part,

11:48:04 5 and, and I mean it, to guess means that I would get

11:48:08 6 it wrong. And if I guess, I'm telling you things

11:48:11 7 that aren't true.

11:48:12 8 I've already made a big enough mistake in

11:48:16 9 guessing, because I was tired, the, the debt owed by

11:48:20 10 the trust, to a ridiculous number.

11:48:22 11 I do not want to say anything about

11:48:24 12 Mr. Herschmann that Sagi Genger said or that I

11:48:28 13 interpreted incorrectly.

11:48:30 14 I have told you the things that I do

11:48:32 15 remember. One of them was complimentary. One of

11:48:35 16 them one uncomplimentary. And those are the things

11:48:39 17 that I know for sure, and I'm not, I'm not trying to

11:48:43 18 avoid the question.

11:48:46 19 MR. HERSCHMANN: Move, move to strike

11:48:47 20 as nonresponsive. Let's see if you can get

11:48:51 21 an answer to the question as to what he

11:48:52 22 recalls based on living through the

11:48:55 23 conversation.

11:48:56 24 MR. POLLOCK: Objection; asked and

11:48:57 25 answered.

11:48:59 1 MR. HERSCHMANN: Answer the question.

11:48:59 2 Tell us everything you recall that he said,

11:49:01 3 and if you're wrong, you're wrong, to the

11:49:03 4 best of your recollection, sir.

11:49:05 5 THE WITNESS: Everything that I recall

11:49:06 6 specifically, I have no specific

11:49:09 7 recollections.

11:49:10 8 MR. HERSCHMANN: How about generally,

11:49:11 9 sir?

11:49:11 10 THE WITNESS: I don't know?

11:49:15 11 BY MR. BOWEN:

11:49:16 12 Q. What did Sagi Genger say to you about his

11:49:19 13 sister, Orly Genger?

11:49:29 14 A. I can't remember specifically.

11:49:33 15 Q. Did he talk to you about Orly Genger?

11:49:36 16 A. Yes, he did.

11:49:37 17 Q. What did he say, specifically, or generally?

11:49:48 18 A. One of the general things that I remember is

11:49:51 19 that -- and this is a summation on my part. It is,

11:49:58 20 it's, it's a summary. It's an approximation; okay?

11:50:02 21 These are certainly not his exact words,

11:50:04 22 but the general idea is that he would very much like

11:50:08 23 to settle this matter with his sister, with you, with

11:50:11 24 everybody involved and be done with it.

11:50:17 25 Q. Other than that did he --

11:50:19 1 A. Sorry?

11:50:20 2 Q. What did you say?

11:50:21 3 A. I said I'm sorry. I was going to say that if,
11:50:24 4 if I had to pick one thing that I've heard more than
11:50:27 5 anything else, that would be it.

11:51:06 6 Q. Did he say to you how he would settle it?

11:50:34 7 A. No, he did not.

11:51:12 8 Q. Did he propose different ideas that might
11:50:41 9 settle the dispute?

11:50:44 10 A. You are at this point refreshing my memory. He
11:50:47 11 said that he had offered settlements in the past. He
11:50:51 12 proposed no ideas to me specifically, other than
11:50:57 13 proposals that were made to trustees in Austin and in
11:51:02 14 New York.

11:51:05 15 MR. CAVALIERE: I would just -- this
11:51:06 16 is Rocco Cavaliere, on behalf of --

11:51:09 17 THE WITNESS: Hi, Rocco.

11:51:09 18 MR. CAVALIERE: -- the trustee. To
11:51:11 19 the extent that there are settlement
11:51:12 20 communications between Sagi Genger or
11:51:15 21 anyone else associated with Dalia Genger or
11:51:21 22 you, Mr. Oldner, you know, between, on, on
11:51:23 23 your end, the prior trustee or this, the
11:51:26 24 current trustee, I would appreciate you not
11:51:28 25 divulging that information on the court

11:51:31 1 record. Thanks.

11:51:32 2 THE WITNESS: I'm sorry. I apologize.

11:51:34 3 MR. CAVALIERE: No, no. You did not,

11:51:35 4 you did not divulge anything --

11:51:37 5 THE WITNESS: Okay.

11:51:37 6 MR. CAVALIERE: -- just yet --

11:51:38 7 THE WITNESS: Okay.

11:51:38 8 MR. CAVALIERE: -- but I --

11:51:39 9 THE WITNESS: Okay.

11:51:39 10 MR. CAVALIERE: -- I just wanted to be

11:51:39 11 certain --

11:51:40 12 THE WITNESS: I'll --

11:51:40 13 MR. CAVALIERE: -- that you don't

11:51:41 14 divulge the details. Thank you.

11:51:43 15 THE WITNESS: Rocco, that's just --

11:51:46 16 that is -- I would just say those are the

11:51:46 17 things -- other than that discussion,

11:51:47 18 that's the only settlement that I talked to

11:51:51 19 him about, that I recall.

11:51:55 20 BY MR. BOWEN:

11:51:55 21 Q. So other than discussions with either the prior

11:51:58 22 bankruptcy trustee or the current bankruptcy trustee,

11:52:01 23 Mr. Sagi Genger never said anything to you about a

11:52:06 24 settlement idea or an offer with respect to disputes

11:52:09 25 that he has with his sister Orly Genger; is that

11:52:13 1 right?

11:52:53 2 A. You, you cut out in the middle of that. Could
11:52:19 3 you say it again, please?

11:52:20 4 Q. Other than settlement talks that involve the
11:52:25 5 bankruptcy trustees, did Sagi Genger ever say to you
11:52:29 6 anything about how he would propose to settle with
11:52:34 7 Orly Genger?

11:52:37 8 A. Not that I recall, no.

11:52:41 9 Q. Did he say disparaging things about his sister?

11:52:45 10 A. No, he never has.

11:53:24 11 Q. Has he said disparaging things about his
11:52:53 12 father?

11:52:54 13 A. Actually, no.

11:53:00 14 Q. I didn't hear what you said.

11:53:01 15 A. Actually, no. I'm sorry. I've gotten too
11:53:06 16 quiet. Actually, no.

11:53:42 17 Q. Now you said that you had to correct the amount
11:53:15 18 of indebtedness that the trust has. How much is the
11:53:18 19 trust in debt?

11:53:20 20 A. The trust --

11:53:20 21 Q. And by that I mean the Orly Genger 1993 trust.

11:53:23 22 A. Can we just say when we say "the trust," from
11:53:24 23 now on that's what we're talking about?

11:53:27 24 Q. Yes.

11:53:27 25 A. Okay. The, the indebtedness is someplace

11:53:31 1 between eight and nine million dollars. It is on the
11:53:34 2 original note for the trust.

11:53:39 3 Q. And --

11:53:39 4 A. That is the only indebtedness.

11:53:42 5 Q. Who is the creditor?

11:53:44 6 A. The creditor is Manhattan Safety Maine.

11:53:49 7 Q. And that's owned by Robin Rodriguez?

11:53:53 8 A. He is one of the owners. I do not know if he
11:53:55 9 is the sole owner.

11:53:57 10 Q. Well, who are the other owners?

11:53:59 11 A. I don't know.

11:54:42 12 Q. What interest does Sagi Genger have in
11:54:04 13 Manhattan Safety Maine?

11:54:07 14 A. I'm sorry. I did not understand.

11:54:10 15 Q. What, what -- what interest does Sagi Genger
11:54:12 16 have in Manhattan Safety Maine?

11:54:16 17 A. I, I do not know the answer to that question.

11:55:05 18 Q. What debt does Recovery Effort Inc. have?

11:54:24 19 A. To who?

11:54:26 20 Q. To anyone.

11:54:27 21 A. To anyone? Debts for legal fees, debts for
11:54:36 22 some travel, debts for some supplies.

11:54:42 23 Q. How much is that?

11:54:45 24 A. Roughly, very roughly, \$200,000 at this time.
11:54:51 25 Very roughly.

11:54:58 1 Q. Who are the creditors to Recovery Effort Inc.?
11:55:01 2 A. Who are we borrowing the money from?
11:55:07 3 Q. Yes.
11:55:08 4 A. Recovery Effort Inc. is borrowing the money
11:55:11 5 from Anglo-American, from one of the --
11:55:15 6 Q. Who owns that?
11:55:15 7 A. It's one of the, one of the companies owned by
11:55:17 8 Robin Rodriguez.
11:55:21 9 Q. How much money has Recovery Effort borrowed
11:55:25 10 from, what did you call it, Anglo-American?
11:55:27 11 A. Anglo-American.
11:55:28 12 Q. Anglo-American, how much money has he borrowed?
11:55:31 13 How much money -- excuse me. How much money has
11:55:36 14 Recovery Effort borrowed from Anglo-American?
11:55:40 15 A. Every nickel we've borrowed.
11:55:42 16 Q. Everything?
11:55:43 17 A. Everything we've borrowed, yes, sir.
11:55:45 18 Q. Which is about \$200,000?
11:55:47 19 A. Yes, sir.
11:56:19 20 Q. How -- well, and you said that money was used
11:55:55 21 to pay lawyers?
11:55:57 22 A. Primarily, overwhelmingly.
11:56:27 23 Q. And to pay you?
11:56:01 24 A. No. I am not being paid.
11:56:03 25 Q. You're not being paid for your services to

11:56:05 1 Recovery Effort Inc.?

11:56:07 2 A. Not at this time.

11:56:09 3 Q. What -- at what time will you be paid for your
11:56:12 4 services?

11:56:13 5 A. I do not know.

11:56:47 6 Q. What's the agreement that you have --

11:56:18 7 A. I do not have --

11:56:20 8 Q. -- for you being paid?

11:56:21 9 A. I do not have one.

11:56:23 10 Q. Well, why do you say you're going to get paid
11:56:25 11 in the future?

11:56:27 12 MR. POLLOCK: Objection;

11:56:28 13 mischaracterizes the testimony.

11:56:35 14 Q. Why do you say you're going to get paid in the
11:56:38 15 future?

11:56:39 16 MR. POLLOCK: Same objection.

11:56:40 17 A. I, I don't remember saying that. Do you want
11:56:43 18 to read this back?

11:56:45 19 Q. No, I don't want to read it back.

11:56:47 20 A. Okay.

11:56:48 21 Q. You can't answer that question?

11:56:49 22 A. I don't believe I said that.

11:57:26 23 Q. Well, let me ask you. Are you going to get
11:56:55 24 paid in the future?

11:57:33 25 A. I don't know.

11:56:57 1 Q. Do you expect to be paid in the future?

11:57:05 2 A. I hope to be paid in the future.

11:57:07 3 Q. Why do you hope to be paid in the future?

11:57:15 4 A. I, I don't understand the meaning of the
11:57:17 5 question. I'm, I'm not trying to be obtuse. Please
11:57:20 6 help me.

11:57:58 7 Q. What's your basis for saying, for having any
11:57:24 8 hope that you would be paid in the future?

11:57:30 9 A. Because I believe that the fraudulent transfer
11:57:33 10 action which we are seeking relief on, that our side
11:57:40 11 will prevail, and that I will be able to be paid as a
11:57:45 12 result of that.

11:57:46 13 Also, as you know, we have another lawsuit
11:57:50 14 against the attorneys that facilitated that transfer.
11:57:55 15 I believe that also has a good chance of recovery,
11:57:58 16 but it is very difficult for me to think that I
11:58:01 17 should be paid from a bankrupt trust, or from a
11:58:07 18 corporation that has recovered no money.

11:58:39 19 Q. Is the trust bankrupt?

11:58:14 20 A. The trust has no money. The trust has debts.
11:58:17 21 That's not bankrupt, but the trust has money, has,
11:58:20 22 has no cash assets, is borrowing money, and has
11:58:25 23 debts.

11:58:27 24 Q. Is the trust currently borrowing money?

11:58:31 25 A. REI is borrowing money. The trust is not

11:58:34 1 borrowing money.

11:59:16 2 Q. Do you have an understanding that you are going
11:58:38 3 to be paid for your services as trustee?

11:58:41 4 A. No. The trust document says I cannot be paid
11:58:47 5 for my services as trustee.

11:58:50 6 Q. When was Adam Pollock hired by the trust?

11:58:57 7 A. In August of 2019.

11:59:37 8 Q. Who hired him?

11:59:03 9 A. I did.

11:59:39 10 Q. Who made the introduction between you and
11:59:08 11 Mr. Pollock?

11:59:10 12 A. I don't remember.

11:59:13 13 Q. You said it was Sagi Genger and John
11:59:15 14 Dellaportas; no?

11:59:16 15 A. It could -- I don't remember.

11:59:52 16 Q. Well, it was -- I'm trying to refresh your
11:59:23 17 recollection. Was it the case that it was Sagi
11:59:26 18 Genger or John Dellaportas that introduced you to
11:59:29 19 Mr. Pollock?

11:59:31 20 A. I do not remember. I did interview Mr. Pollock
11:59:34 21 myself.

11:59:35 22 Q. Okay.

11:59:35 23 A. I made that selection.

11:59:37 24 Q. And who made the introduction?

11:59:38 25 A. Well --

11:59:39 1 MR. POLLOCK: Objection; asked and
11:59:41 2 answered.

11:59:43 3 Q. You can answer.

11:59:44 4 A. You are asking me to speculate. I don't
11:59:47 5 remember.

12:00:35 6 Q. How many people did you interview before you
11:59:53 7 hired Mr. Pollock?

11:59:57 8 A. I believe Mr. Pollock was the second person I
12:00:00 9 talked to. He could have been the third, but I
12:00:07 10 believe that he was the second.

12:00:47 11 Q. So how did you get referrals about who to hire?

12:00:23 12 A. I have already made speculation once, and I was
12:00:27 13 wrong. Please don't ask me to do it again. I would
12:00:30 14 be guessing.

12:00:31 15 Q. I have --

12:00:31 16 A. I don't know.

12:00:35 17 MR. KURLAND: Move to strike as
12:00:36 18 nonresponsive.

12:00:37 19 BY MR. BOWEN:

12:00:38 20 Q. Look I have more questions on this topic, and I
12:00:40 21 have questions on, on a lot of topics --

12:01:08 22 A. Okay.

12:00:43 23 Q. -- and all of this is related to the Motion to
12:00:44 24 Dismiss. And --

12:00:45 25 A. Okay.

12:00:45 1 Q. -- you made a statement earlier that you have
12:00:49 2 some kind of medical condition that makes your
12:00:51 3 testimony unreliable.

12:00:54 4 A. I did not.

12:00:55 5 Q. Is that what you're saying?

12:00:56 6 A. No, sir. I said a medical condition that
12:00:58 7 requires that I get up and move about every 50
12:01:01 8 minutes to an hour.

12:01:02 9 It does not make my, my testimony
12:01:04 10 unreliable. What it means is that if I don't move, I
12:01:08 11 get foggy. I am likely to attempt to answer
12:01:12 12 questions by speculation, instead of realizing that
12:01:15 13 the true answer is "I don't know."

12:01:19 14 Q. Well, other than the answer that you corrected
12:01:21 15 when we began after the break are you saying that the
12:01:24 16 rest of your testimony is completely reliable, or are
12:01:28 17 you saying there are other points where you got
12:01:32 18 foggy, and we can't rely on your testimony?

12:01:57 19 A. I believe that the rest of my testimony is
12:01:38 20 reliable.

12:01:38 21 Q. Okay. And if you feel foggy, then it's your
12:01:41 22 duty --

12:01:42 23 A. Yes.

12:01:42 24 Q. -- as a witness under oath to say that you need
12:01:44 25 to stand up. Do you understand that?

12:01:46 1 A. I am, I am sorry. That is why I let you know
12:01:49 2 last time, because I did not pay attention to the
12:01:52 3 clock. It is why I asked for a break the first time.

12:01:54 4 Q. Well, can I have an agreement with you that --

12:01:57 5 A. I do understand.

12:01:58 6 Q. -- if you feel foggy, and you need to stand up,
12:02:00 7 you are going to do that. You're going to tell me
12:02:03 8 that --

12:02:03 9 A. Yes, sir.

12:02:04 10 Q. -- no matter what?

12:02:05 11 A. Yes, sir.

12:02:05 12 MR. POLLOCK: Mr. Bowen --

12:02:05 13 Q. Because you realize that we're all here to rely
12:02:08 14 on your testimony --

12:02:38 15 A. Yes.

12:02:09 16 Q. -- and we're looking to have truthful, honest,
12:02:12 17 reliable, believable testimony; right?

12:02:12 18 A. I am trying to provide you with honest answers.
12:02:15 19 That is my goal.

12:02:16 20 MR. POLLOCK: Mr. Bowen, I think --

12:02:18 21 Q. And your testimony today is that you have
12:02:20 22 provided truthful, reliable answers, all of the way
12:02:24 23 up until the, the last answer that you gave right
12:02:26 24 before the break; is that correct?

12:02:29 25 MR. POLLOCK: Mr. Bowen, it is

12:02:31 1 occasionally hard for anybody who feels
12:02:35 2 like an onset of a health condition or
12:02:37 3 foggy to determine exactly this question.

12:02:40 4 My guess is that he is trying to the
12:02:42 5 best of his ability to do exactly what you
12:02:44 6 said.

12:02:45 7 It is also possible for anybody who is
12:02:48 8 feeling a health condition to not be
12:02:50 9 completely self aware of that at that
12:02:52 10 moment.

12:02:54 11 MR. BOWEN: Mr. Pollock, you're again
12:02:55 12 obstructing my line of questioning, and I
12:02:57 13 ask you to, to desist.

12:02:58 14 BY MR. BOWEN:

12:02:58 15 Q. Mr. Oldner, I'm asking you whether there's
12:03:00 16 anything else in your testimony that you feel is
12:03:03 17 unreliable, because if it is, we have to correct it
12:03:07 18 now.

12:03:07 19 And I'm not casting any kind of aspersion
12:03:10 20 on you. It happens. You just tell me what else we
12:03:12 21 need to correct.

12:03:45 22 MR. POLLOCK: Mr. Bowen, I'm not sure
12:03:15 23 that that is how the FRCP works with
12:03:19 24 respect to corrections and an errata sheet.

12:03:23 25 And I don't know that we need to take

12:03:24 1 testimony from Mr. Oldner as to how the
12:03:28 2 FRCP works and when corrections are
12:03:32 3 required. He will do his best.

12:03:34 4 MR. BOWEN: Mr. Pollock, please
12:03:34 5 desist. Please desist. You're obstructing
12:03:35 6 this deposition. Please stop.

12:03:37 7 BY MR. BOWEN:

12:03:37 8 Q. Mr. Oldner --

12:03:39 9 MR. POLLOCK: Can we move on?

12:04:04 10 Q. -- is there anything else you need to correct?

12:03:42 11 A. Mr. Bowen, to, to the best of my knowledge, no.

12:04:12 12 Q. And you -- I have an agreement with you now
12:03:50 13 that if you feel that you need to stop, or stand up,
12:03:53 14 or whatever, if you feel like you're no longer able
12:03:56 15 to provide reliable testimony, you will tell me,
12:03:59 16 right, to the best of your ability?

12:04:36 17 A. To the best of my ability, yes, sir, I will.

12:04:02 18 If you happen to notice it's gone an hour, would you
12:04:04 19 mention that to me, please?

12:04:07 20 Q. Okay. But I need your lawyers to be
12:04:09 21 responsible for, for your timing issue, not mine.
12:04:12 22 Okay?

12:04:14 23 A. Okay.

12:04:14 24 Q. So going back to your lawyers, did your lawyers
12:04:17 25 ever tell you that -- well, let me ask it this way.

12:04:24 1 A. Sure.

12:04:24 2 Q. Did Sagi Genger or John Dellaportas ever tell
12:04:30 3 you that some of the lawyers that they contacted as
12:04:33 4 candidates to be hired as counsel for the trust had
12:04:38 5 already been retained by Eric Herschmann?

12:04:43 6 A. Not that I recall.

12:05:21 7 Q. Or than Eric Herschmann had already spoken to
12:04:49 8 them? Did they tell you that?

12:04:52 9 A. Not that I recall.

12:05:32 10 Q. Does that refresh your recollection that John
12:04:59 11 Dellaportas and Sagi Genger arranged for you to talk
12:05:04 12 to Adam Pollock?

12:05:08 13 A. No. It --

12:05:10 14 MR. POLLOCK: Objection; asked and
12:05:11 15 answered.

12:05:13 16 A. I, I don't know who I got that recommendation
12:05:15 17 from. You could get a list of people, as well as I
12:05:20 18 could.

12:06:00 19 Q. Well, who, who else could have made those
12:05:24 20 recommendations, if not John Dellaportas and Sagi
12:05:27 21 Genger?

12:05:29 22 A. Robin Rodriguez.

12:05:31 23 Q. Is he --

12:05:31 24 A. But I don't remember.

12:05:32 25 Q. -- the one?

12:05:34 1 A. I don't remember.

12:05:35 2 Q. Anyone else aside from Robin Rodriguez?

12:05:41 3 A. I, I would assume that Jay Ong could have made
12:05:45 4 that recommendation.

12:05:46 5 Q. Did he?

12:05:47 6 A. Not -- I, I don't know. I really don't.

12:05:54 7 Q. Why was Walden Macht terminated as counsel to
12:05:59 8 the trust?

12:06:00 9 MR. POLLOCK: Objection; seeks
12:06:01 10 privileged communications, and --

12:06:06 11 Q. Well, let me clarify. I'm not asking you for
12:06:08 12 communications with any lawyers. I'm asking for your
12:06:11 13 understanding of why they were terminated as counsel.

12:06:15 14 MR. POLLOCK: When they -- Mr. Bowen,
12:06:15 15 when a lawyer withdraws from a matter, as
12:06:19 16 you're aware, the, any submission --

12:06:26 17 MR. BOWEN: Mr. Pollock, this is a
12:06:28 18 speaking objection, and you're, once again,
12:06:29 19 obstructing my line of examination, and
12:06:29 20 you're making this interminable.

12:06:31 21 MR. POLLOCK: Mr. Bowen --

12:06:31 22 MR. BOWEN: And you have -- your
12:06:31 23 client just told you that he has a medical
12:06:35 24 condition, and he has -- let's show some
12:06:36 25 concern for your own client.

12:06:38 1 I am very sensitive to his, the
12:06:40 2 imposition on his time. I am very much
12:06:44 3 aware of it. And all of your
12:06:46 4 interpositions and, and speaking objections
12:06:47 5 not only are completely out of line and not
12:06:50 6 allowed under the rules, but it's having an
12:06:50 7 adverse effect on your client, who just
12:06:54 8 told all of us that this is wearing him
12:06:56 9 out --

12:06:56 10 MR. POLLOCK: Mr. Bowen, I would --

12:06:57 11 MR. BOWEN: -- to the point where he
12:06:58 12 just gave an answer that he said is
12:07:00 13 completely unreliable.

12:07:28 14 MR. POLLOCK: Mr. Bowen, I would --

12:07:03 15 MR. BOWEN: So, please, take that into
12:07:05 16 account. Stop this kind of marathon. This
12:07:08 17 should not be a marathon. We should be
12:07:10 18 nearing the end of my examination, but
12:07:12 19 we're not because of you.

12:07:13 20 And I've said this to you repeatedly,
12:07:15 21 and you just won't stop. And it's unfair
12:07:18 22 to your own client, so please stop.

12:07:20 23 MR. POLLOCK: Mr. Bowen, I would --

12:07:21 24 BY MR. BOWEN:

12:07:21 25 Q. Mr. Oldner, please answer the question.

12:07:23 1 MR. POLLOCK: Mr. Bowen, I would
12:07:25 2 respectfully ask that you stop yelling at
12:07:28 3 me, that's, a. And, b --

12:07:29 4 MR. BOWEN: First of all, if you, if
12:07:29 5 you think that's yelling, you're not from
12:07:31 6 New York, and that ain't yelling, not where
12:07:34 7 I come from --

12:07:34 8 MR. POLLOCK: Mr. Bowen --

12:07:35 9 MR. BOWEN: -- so calm down.

12:07:37 10 MR. POLLOCK: -- you are correct --

12:07:37 11 BY MR. BOWEN:

12:07:37 12 Q. Mr. Oldner, please answer the question.

12:07:39 13 MR. POLLOCK: Mr. Bowen, you are
12:07:39 14 correct that neither I nor the witness are
12:07:41 15 from New York.

12:07:42 16 Q. Mr. Oldner --

12:07:42 17 MR. POLLOCK: You are taking a
12:07:43 18 deposition --

12:07:44 19 Q. -- please answer the question.

12:07:46 20 MR. BOWEN: Mr. Pollock, I'm going to
12:07:48 21 speak over you. I want you to stop.

12:07:49 22 Mr. Oldner, please answer the
12:07:50 23 question. And I actually don't remember
12:07:50 24 it, so I'm going to ask the court reporter
12:07:52 25 to read it back.

12:07:53 1 MR. POLLOCK: Mr. Bowen, respectfully
12:07:55 2 for the court reporter, I would ask that
12:07:57 3 you actually not speak over me, so that we
12:07:59 4 can get an accurate record.

12:08:01 5 I would remind you that you are taking
12:08:03 6 a deposition not in New York but in
12:08:05 7 Arkansas, and I would ask that you be
12:08:06 8 respectful to the decorum that at least
12:08:10 9 exists in Arkansas that doesn't involve
12:08:12 10 yelling at other attorneys.

12:08:14 11 C, I would ask that -- it is incumbent
12:08:18 12 on a lawyer to protect and preserve the
12:08:20 13 privilege, and I would ask that you be
12:08:23 14 respectful of that. Thank you.

12:08:26 15 Now if you want to repeat the
12:08:28 16 question, or if you want the stenographer
12:08:29 17 to repeat the question, you can proceed.

12:08:33 18 MR. BOWEN: I will repeat the
12:08:34 19 question.

12:08:34 20 BY MR. BOWEN:

12:08:34 21 Q. Mr. Oldner, why was Walden Macht terminated?

12:08:44 22 MR. POLLOCK: Again --

12:08:46 23 A. I'm, I'm trying to think of the proper way to
12:08:48 24 answer that question, because Walden Macht is a fine
12:08:52 25 firm, but I felt that I needed representation that

12:08:59 1 was going to fit the needs of REI better than Walden
12:09:06 2 Macht was.

12:09:09 3 Q. So you made the decision to terminate them?

12:09:11 4 A. Yes. Along with Robin Rodriguez, I made that
12:09:14 5 decision. That is a fact. I mean, I know that one
12:09:18 6 to be true. I made that decision with Robin
12:09:20 7 Rodriguez.

12:09:22 8 And I was in charge of selecting the next
12:09:31 9 attorney, which Robin would then approve, because, as
12:09:35 10 you know, we have a joint suit.

12:10:14 11 Q. So what did you discuss with Robin Rodriguez
12:09:41 12 about terminating Walden Macht?

12:09:46 13 A. I, I believe that's -- I believe that should be
12:09:51 14 between me and Robin, since we are on the same side
12:09:56 15 of the lawsuit -- not meaning to be contentions -- of
12:10:00 16 which you are one of the Defendants.

12:10:04 17 Q. Well --

12:10:04 18 A. So if --

12:10:05 19 Q. -- we're going to come back to that, maybe not
12:10:07 20 in this deposition.

12:10:08 21 A. If it's still a good question, tell me, and I,
12:10:09 22 I will answer it. Okay?

12:10:39 23 Q. You, you think the fact that I'm a Defendant
12:10:15 24 is, is a basis for you not to answer my questions?

12:10:18 25 A. No. I'm just asking you if that's a proper

12:10:21 1 question. If it is, I will answer. I'm not -- as I
12:10:23 2 told you earlier, I'm really not trying to be evasive
12:10:26 3 in any way whatsoever.

12:10:28 4 Q. Well, it is a proper question.

12:10:28 5 A. Okay.

12:10:28 6 Q. I'm not asking you an improper question.

12:10:29 7 A. Thank you.

12:10:30 8 Q. So what was your communication with Robin
12:10:31 9 Rodriguez about terminating Walden Macht?

12:10:35 10 A. That we needed somebody that really --
12:10:38 11 actually, it was less about terminating Walden Macht.
12:10:42 12 It was finding, finding somebody who was a better fit
12:10:44 13 for what we needed to do.

12:11:22 14 Q. And who decided you needed a better fit, you or
12:10:50 15 Robin?

12:10:51 16 A. I was the first person that thought about it,
12:10:53 17 but -- that I remember, as I recall, but Robin and I
12:10:58 18 were on the same page, apparently, from immediately.

12:11:02 19 Q. So what --

12:11:02 20 A. You know, he may have brought it up to me.

12:11:05 21 Q. What was it about Walden Macht --

12:11:07 22 A. Pardon me?

12:11:07 23 Q. What was it about Walden Macht that was not a
12:11:10 24 good fit?

12:11:11 25 A. It, it -- there were multiple issues, which I

12:11:18 1 cannot recall right now.

12:11:22 2 Q. Were they -- and you don't have to tell me what
12:11:26 3 they were, but this is a yes-or-no question. Were
12:11:28 4 they legal issues where you didn't like the answer
12:11:31 5 you were getting from Walden Macht?

12:11:34 6 A. No, they were not.

12:11:37 7 Q. Did you -- again, just "yes" or "no" -- did you
12:11:40 8 have a problem with the quality of their work?

12:11:43 9 MR. POLLOCK: Mr. Bowen, you appear to
12:11:45 10 be seeking discovery with respect to the
12:11:48 11 MSM action.

12:11:49 12 This couldn't possibly relate to the
12:11:51 13 pending Motion to Dismiss. I would
12:11:53 14 respectfully ask you to move on.

12:11:55 15 And, b, you're getting right into work
12:11:58 16 product privilege, and -- you're talking
12:11:59 17 about the quality of their work. That is
12:12:02 18 right into work product privilege and
12:12:04 19 privileged communication.

12:12:05 20 If you can possibly make a proffer as
12:12:08 21 to how this relates to the Motion to
12:12:10 22 Dismiss, I would respectfully ask that you
12:12:13 23 do so.

12:12:13 24 But it appears that contrary to Judge
12:12:13 25 Garrity's instructions, you are directly

12:12:16 1 seeking testimony that at best relates to
12:12:19 2 the MSM action in which you are a
12:12:21 3 Defendant, and in which various people on
12:12:24 4 this line have asked discovery in that case
12:12:27 5 to be stayed, including Mr. Cavaliere,
12:12:29 6 who's on the line, and Mr. --

12:12:29 7 MR. BOWEN: Mr. Pollock --

12:12:29 8 MR. POLLOCK: I don't know who John
12:12:29 9 is. John, if you don't mind, can you
12:12:29 10 identify yourself? He just came on.

12:12:38 11 MR. DELLAPORTAS: Sorry. This is John
12:12:38 12 Dellaportas. I --

12:12:42 13 MR. POLLOCK: Oh.

12:12:42 14 MR. DELLAPORTAS: I'm apologize for
12:12:42 15 interrupting joining in progress, but I was
12:12:42 16 tied up this morning.

12:12:46 17 THE WITNESS: John, you look
12:12:47 18 different.

12:12:48 19 MR. BOWEN: Mr. Pollock was just
12:12:51 20 finishing yet another obstructionist
12:12:53 21 objection, and I asked him to stop.

12:12:58 22 BY MR. BOWEN:

12:12:58 23 Q. Mr. Oldner, please answer the question, and
12:13:00 24 I'll repeat it.

12:13:01 25 A. Thank you.

12:13:02 1 Q. The question is -- and this is a yes-or-no
12:13:04 2 question, because I'm, I'm --

12:13:05 3 A. Yes, sir.

12:13:05 4 Q. -- mindful of the privilege. Did -- was your
12:13:10 5 decision to terminate Walden Macht because you had a
12:13:14 6 concern about the quality of their work?

12:13:16 7 A. It was not.

12:13:17 8 MR. POLLOCK: Same objection.

12:13:19 9 Q. All right. And did -- was it part of your
12:13:23 10 decision in terminating Walden Macht because you
12:13:26 11 asked them to do something, and they didn't want to
12:13:28 12 do it?

12:13:30 13 MR. POLLOCK: Objection. That clearly
12:13:31 14 seeks --

12:13:34 15 Q. You can answer that "yes" or "no."

12:13:35 16 MR. POLLOCK: You cannot. And I don't
12:13:35 17 even know the answer, but you cannot
12:13:37 18 testify to what you directed them or asked
12:13:40 19 them. Those are all privileged
12:13:42 20 communications.

12:13:42 21 A. Mr. Bowen --

12:13:43 22 Q. This is a yes-or-no answer. It is not --

12:13:44 23 A. Mr. Bowen, I have been instructed --

12:13:46 24 Q. -- impinging on privilege.

12:13:46 25 A. Mr. Bowen, I have been instructed by counsel

12:13:49 1 not to answer that question.

12:13:52 2 Q. So you're not going to answer that question?

12:13:53 3 A. I've been instructed by counsel not to answer
12:13:57 4 that question.

12:14:39 5 Q. How is Mr. Pollock being paid?

12:14:09 6 A. REI pays him.

12:14:44 7 Q. But he represents the trust?

12:14:15 8 A. REI pays him on behalf of the trust. He
12:14:18 9 represents the trust. He represents REI, and REI
12:14:22 10 pays him for his representation of the trust as well.

12:15:00 11 Q. Does the trust have an indebtedness to REI?

12:14:32 12 A. No, the trust does not.

12:15:10 13 Q. Then, then the question is, and I think you
12:14:39 14 answered it, but let me just ask this question to
12:14:42 15 clarify it.

12:14:43 16 Even though Mr. Pollock and his firm are
12:14:47 17 doing legal work on behalf of the trust, and they're
12:14:52 18 being paid for that work, the trust is not paying for
12:14:54 19 it?

12:14:54 20 A. The trust is not paying for it. Recovery
12:14:56 21 Effort Inc. is borrowing the money and paying for his
12:15:02 22 work, on behalf of the trust.

12:15:06 23 Q. And you came to hire Mr. Pollock based on a
12:15:11 24 referral from either Sagi, John Dellaportas, or Robin
12:15:17 25 Rodriguez; is that correct?

12:15:19 1 MR. POLLOCK: Objection;

12:15:19 2 mischaracterizes the testimony.

12:15:54 3 A. I came to hire Adam Pollock based on a series

12:15:29 4 of lengthy conversations with Adam Pollock.

12:15:33 5 Q. But, but you met or, or were referred to

12:15:36 6 Mr. Pollock by either Sagi Genger, John Dellaportas,

12:15:40 7 or Robin Rodriguez; is that correct?

12:15:43 8 MR. POLLOCK: Objection; asked and

12:15:44 9 answered. It mischaracterizes his prior

12:15:46 10 testimony.

12:15:46 11 A. I don't remember.

12:16:15 12 Q. But it was one of those three, but you don't

12:15:52 13 remember; is that correct?

12:15:53 14 MR. POLLOCK: Objection;

12:15:53 15 mischaracterizes his prior testimony, and

12:15:56 16 asked and answered.

12:16:28 17 Q. You can answer it. It's one of those three,

12:16:01 18 but you don't remember which one?

12:16:03 19 A. I believe I also said it could have been Jay

12:16:07 20 Ong. I actually don't know. It may be somebody else

12:16:11 21 who I have forgotten. I do not want to make a

12:16:14 22 statement that I do not know to be true. I don't

12:16:17 23 know.

12:16:18 24 Q. And you're saying that Robin Rodriguez agreed

12:16:23 25 also to hire Mr. Pollock and his firm on behalf of

12:16:26 1 Manhattan Safety?

12:16:29 2 A. He did.

12:16:29 3 Q. Did you interview Mr. Pollock together?

12:16:32 4 A. We did not.

12:16:35 5 Q. Who interviewed him first?

12:16:38 6 A. I'm not sure. I believe I did.

12:16:48 7 Q. Now you -- then you -- when you, when you
12:16:51 8 corrected your testimony, you originally said that it
12:16:59 9 was about \$20 million in debt, and now you're saying
12:17:02 10 there's about \$8 million in debt to the trust,
12:17:05 11 meaning the trust is in debt to the tune of about
12:17:09 12 \$8 million --

12:17:11 13 A. There's a note --

12:17:12 14 Q. -- and that --

12:17:12 15 A. It could be eight to nine million but, yes,
12:17:14 16 there's one note.

12:17:15 17 Q. Okay.

12:17:15 18 A. I do not know the amount of the note today.

12:17:18 19 Q. And does that note carry interest?

12:17:22 20 A. Only statutory interest.

12:17:57 21 Q. What's that interest rate?

12:17:26 22 A. The statutory interest rate in New York is
12:17:29 23 nine percent.

12:17:30 24 Q. And other than that one note at an interest
12:17:34 25 rate of nine percent, there's no other debt on the

12:17:37 1 trust?

12:17:38 2 A. The trust has no other debts.

12:17:45 3 Q. But the trust wholly owns Recovery Effort, Inc;
12:17:49 4 right?

12:18:34 5 A. That is correct.

12:18:35 6 Q. And you're saying Recovery Effort Inc. is in
12:17:54 7 debt roughly \$200,000?

12:17:57 8 A. That is correct.

12:18:42 9 Q. And Recovery Effort Inc. has been paying all of
12:18:02 10 the lawyers doing work either for Recovery Effort or
12:18:05 11 for the trust; right?

12:18:07 12 A. That is correct.

12:19:00 13 Q. Recovery Effort has no assets?

12:18:15 14 A. None.

12:19:03 15 Q. And it has one loan or multiple loans with
12:18:26 16 Anglo-American?

12:18:34 17 A. I, I don't know what you mean by that question.

12:18:36 18 MR. POLLOCK: Mr. Bowen, this entire
12:18:38 19 line of questioning is harassing and
12:18:41 20 burdensome of a witness who Mr. Geron
12:18:43 21 subpoenaed in Arkansas in his individual
12:18:52 22 capacity.

12:18:53 23 If how REI pays its bills is possibly
12:18:57 24 connected to the Motion to Dismiss, I
12:19:00 25 invite you to make a proffer.

12:19:02 1 If not, please move on to the topic
12:19:04 2 that was directed by Judge Garrity for us
12:19:07 3 to have the deposition on in Judge
12:19:09 4 Garrity's, Tuesday, June 23rd, discovery
12:19:13 5 conference.

12:19:14 6 Q. Mr. Oldner --

12:19:14 7 MR. POLLOCK: Otherwise, you are just
12:19:16 8 harassing --

12:19:18 9 Q. -- that arrangement, the loan arrangement that
12:19:18 10 Recovery Effort Inc. has with Anglo-American, who
12:19:23 11 from Recovery Effort's side negotiated terms for that
12:19:27 12 loan agreement?

12:19:28 13 A. I did.

12:19:59 14 Q. And is that some kind of revolving line of
12:19:33 15 credit, where however much money you need, you can
12:19:36 16 get it, or is it a lump sum loan?

12:19:39 17 A. It is on an as-needed basis.

12:19:43 18 MR. POLLOCK: Mr. Bowen --

12:19:45 19 Q. What is the upper limit on that?

12:19:46 20 A. Pardon me?

12:19:47 21 Q. What's the upper limit? What's the maximum you
12:19:50 22 can borrow?

12:19:51 23 A. I am not certain.

12:20:28 24 Q. Is there an upper limit?

12:20:32 25 A. I'm sure there is.

12:20:33 1 Q. But you don't know what it is, offhand?

12:20:01 2 A. I do not.

12:20:39 3 Q. What's the interest rate?

12:20:03 4 A. Ten percent.

12:20:41 5 Q. Ten percent?

12:20:46 6 A. Ten percent.

12:20:10 7 Q. Has Recovery Effort made any partial repayment?

12:20:17 8 A. Pardon me?

12:20:18 9 Q. Has Recovery Effort made any partial repayment

12:20:21 10 for any other type of money transferred to

12:20:24 11 Anglo-American?

12:20:25 12 A. No, sir.

12:21:08 13 Q. Now the assets of Recovery Effort are the

12:20:32 14 claims that were assigned by the trust?

12:20:35 15 A. That is correct.

12:21:17 16 Q. And those are the only assets it has, other

12:20:40 17 than borrowed money?

12:20:42 18 A. Yes, sir.

12:21:24 19 Q. And, to your understanding, the trust has only

12:20:53 20 one asset; correct?

12:20:57 21 A. And that asset would be?

12:20:59 22 Q. You tell me.

12:21:02 23 A. You asked the question. What asset are you

12:21:03 24 talking about? I'm just trying to confirm. I --

12:21:07 25 Q. Well, the only asset that the trust has, to

12:21:10 1 your understanding, is the claim to the
12:21:11 2 \$32.3 million?

12:21:15 3 A. Plus the claim against the attorneys. That --
12:21:18 4 those would be the two assets.

12:22:07 5 Q. What are the values of those claims, roughly?

12:21:25 6 A. 41 and a half million dollars, approximately,
12:21:33 7 on the -- 41 and a half million dollars on the
12:21:43 8 derivative lawsuit, the one that is styled both by
12:21:51 9 Manhattan Safety Maine and Recovery Effort Inc. And
12:21:55 10 it would be hard to say a value on the case against
12:21:59 11 the attorneys.

12:22:00 12 Q. You don't have --

12:22:01 13 MR. POLLOCK: Mr. Bowen --

12:22:02 14 Q. -- a value in mind for that?

12:22:05 15 MR. POLLOCK: Mr. Bowen, you appear to
12:22:06 16 be seeking discovery that is directly
12:22:10 17 related to the claim at issue in the MSM
12:22:14 18 action.

12:22:14 19 We are not doing discovery on that
12:22:16 20 case. You're asking him to evaluate the
12:22:18 21 claims and, in that case. We're not doing
12:22:20 22 that today. That's just harassing the
12:22:21 23 witness. Move on.

12:22:27 24 MR. BOWEN: Please, please stop with
12:22:27 25 the obstructionist objections.

12:22:28 1 BY MR. BOWEN:

12:22:29 2 Q. Mr. Oldner, do you have any ballpark figure of
12:22:32 3 how valuable that claim is?

12:22:34 4 A. No, sir, I do not.

12:23:15 5 Q. Were those claims pledged by Recovery Effort to
12:22:41 6 secure the loan that it's taking from Anglo-American?

12:22:49 7 A. Only to the, only to the amount of the loan
12:22:53 8 plus interest, and, I don't -- actually, no. I take
12:22:59 9 that back. No, they were not.

12:23:32 10 Q. So there's no pledge?

12:23:04 11 A. There's no pledge.

12:23:06 12 Q. Is there any security for the loan that
12:23:09 13 Recovery Effort has taken?

12:23:11 14 A. None whatsoever. This is complicated. You
12:23:17 15 have to give me a minute to think about it; okay?
12:23:19 16 Sorry.

12:23:20 17 Q. You take all of the time you want, Mr. Oldner.

12:23:23 18 A. Thank you.

12:23:24 19 Q. I have no --

12:23:25 20 A. Yes, sir.

12:23:27 21 Q. -- complaints with your, with your conduct at
12:23:27 22 all.

12:23:27 23 A. Okay. Mr. Bowen, they, they have no security.
12:23:28 24 They have no security interest. They are loaning the
12:23:33 25 money at 10 percent.

12:23:36 1 Q. You're aware of the Inter-Creditor Agreement,
12:23:38 2 of course?

12:23:40 3 A. I am.

12:24:15 4 Q. And you know that that money pledges money to
12:23:45 5 Robin Rodriguez and Sagi Genger; right?

12:23:51 6 MR. POLLOCK: Again, I restate my
12:23:52 7 objection, that this has nothing to do with
12:23:54 8 the Motion to Dismiss, and appears to be
12:23:57 9 purely related to the pendency, the claims
12:24:00 10 that are pending in this action.

12:24:04 11 MR. HERSCHMANN: Mr. Pollock, I don't
12:24:05 12 understand. It's Eric Herschmann. We have
12:24:08 13 given you a standing objection. What more
12:24:10 14 on earth could you need, in continuously
12:24:11 15 doing this?

12:24:12 16 MR. POLLOCK: I need --

12:24:13 17 MR. HERSCHMANN: You have a standing
12:24:15 18 objection. That's all you need to worry
12:24:17 19 about.

12:24:18 20 MR. POLLOCK: I need the questioner to
12:24:20 21 stop harassing the witness.

12:24:52 22 MR. HERSCHMANN: Then that's a
12:24:26 23 standing objection you have. We're just
12:24:27 24 wasting time, and I don't have time for
12:24:29 25 this.

12:24:29 1 MR. POLLOCK: I appreciate that you're
12:24:30 2 imposing time on the witness on topics that
12:24:30 3 are -- sorry, I apologize -- that you're
12:24:32 4 calling Mr. Bowen and imposing time on the
12:24:36 5 witness for topics that are far afield from
12:24:37 6 the Motion to Dismiss and the, far afield
12:24:41 7 from Judge Garrity's instruction, and I
12:24:44 8 would respectfully ask in the interest of
12:24:46 9 all of our times, including the witness,
12:24:47 10 that he move along.

12:24:50 11 MR. HERSCHMANN: All right. So every
12:24:53 12 time you make that speaking objection,
12:24:53 13 you're just wasting time.

12:24:57 14 I don't -- I've never seen anything
12:24:57 15 like it. It's a standing objection. As a
12:24:59 16 lawyer, it can never get any better. Just
12:25:02 17 stop.

12:25:03 18 BY MR. BOWEN:

12:25:04 19 Q. Mr. Oldner, let me restate the question
12:25:06 20 because --

12:25:07 21 A. Thank you, Mr. Bowen.

12:25:49 22 Q. -- you may have forgotten it.

12:25:12 23 A. I have.

12:25:55 24 Q. Okay. The question was -- well, let me, let me
12:25:25 25 back up for a second. You signed an Inter-Creditor

12:25:28 1 Agreement on behalf of the trust; right?

12:26:07 2 A. I did.

12:26:08 3 Q. And you signed it also on behalf of Recovery

12:25:36 4 Effort Inc.?

12:25:38 5 A. I did.

12:25:39 6 Q. Do you remember that agreement?

12:25:43 7 A. Do I remember it broadly, or do I remember it
12:25:46 8 specifically?

12:25:47 9 Q. Broadly.

12:25:48 10 A. Yes.

12:26:22 11 Q. You understand the purpose of that agreement?

12:25:54 12 A. Yes.

12:26:26 13 Q. And you signed that agreement on behalf of the
12:25:59 14 trust days after you were appointed the successor
12:26:02 15 trustee; correct?

12:26:05 16 A. I did.

12:26:06 17 Q. How many days, two days?

12:26:08 18 A. I believe that was signed on the 16th. You're
12:26:11 19 causing me to speculate, but I believe that was
12:26:13 20 signed on the 16th.

12:26:15 21 Q. It was the weekend after you accepted
12:26:18 22 appointment as the successor trustee?

12:26:21 23 A. That is correct.

12:26:22 24 Q. The first time you saw that agreement was after
12:26:23 25 you had already been appointed; correct?

12:26:27 1 A. That is correct.

12:26:27 2 Q. But you had already discussed the idea behind
12:26:29 3 that agreement before you were appointed; isn't that
12:26:32 4 correct?

12:26:33 5 A. No.

12:27:14 6 Q. So that agreement was new to you when it was
12:26:40 7 first presented after you were appointed; is that
12:26:42 8 what you're saying?

12:27:24 9 A. Yes.

12:27:24 10 Q. And, and what did you do to -- well, you know
12:26:53 11 what, let me leave that for a moment, and I'll come
12:26:55 12 back to it.

12:27:31 13 A. Sure.

12:27:32 14 Q. Who, who is the creditor for the eight or
12:26:59 15 nine million dollars that the trust owes?

12:27:03 16 A. Manhattan Safety Maine.

12:27:07 17 Q. That's Robin Rodriguez again?

12:27:39 18 A. Yes.

12:27:14 19 Q. What were you thinking about when you said that
12:27:16 20 you thought the debt was around 20 million?

12:27:21 21 A. As I've told you, that was a completely
12:27:23 22 inaccurate answer as a result of the fact that I
12:27:26 23 didn't get up and move around, which we will be doing
12:27:29 24 in about 11 minutes.

12:27:31 25 What was I thinking? I can tell you I was

12:27:33 1 thinking incorrectly. I added two different figures
12:27:36 2 that were totally unrelated, in my head, and made a
12:27:38 3 speculation. I will refrain from doing that in the
12:27:41 4 future.

12:27:42 5 MR. POLLOCK: My --

12:27:43 6 Q. What were those two different figures?

12:27:46 7 MR. POLLOCK: I don't want to
12:27:46 8 interrupt this question, but I think it now
12:27:49 9 has been 50 minutes. Maybe if he can
12:27:52 10 answer this question, and we can take
12:27:54 11 another break. I think we've been on since
12:27:55 12 11:40.

12:27:55 13 Q. What were you are thinking of? What were the
12:27:57 14 other two figures you were thinking about?

12:28:00 15 A. I wasn't thinking two other figures. I was
12:28:02 16 thinking two figures, the \$8 million loan and the
12:28:05 17 \$12 million in notes; okay?

12:28:07 18 The \$12 million in notes are actually an
12:28:10 19 asset, or part of the \$32 million, and I honestly,
12:28:14 20 Mr. Bowen, got that confused and thought those notes
12:28:18 21 were owed, in addition to the other note, by the Orly
12:28:21 22 Genger Trust.

12:28:23 23 And that is where I got the \$20 million,
12:28:25 24 which is, is wrong, and it's stupid, and I apologize.

12:28:30 25 Q. Can --

12:28:30 1 A. And I hope that I have corrected that
12:28:32 2 completely.

12:29:01 3 Q. If you want to continue this and just stand, or
12:28:38 4 even pace, we can do it that way, or do you need a
12:28:40 5 break?

12:28:42 6 MR. POLLOCK: No, we will take a
12:28:43 7 break.

12:28:43 8 A. I need a break, and I need -- I need a break
12:28:45 9 every 50 minutes.

12:28:46 10 Q. That's fine. I'm not --

12:28:48 11 MR. POLLOCK: Ten minutes.

12:28:48 12 Q. -- suggesting otherwise. I'm just trying to
12:28:50 13 give you some options. How much time do you want?

12:28:52 14 A. You know something, I don't, I don't think
12:28:53 15 about standing, and I wouldn't have thought about it
12:28:55 16 until we got back to this. I can stand. I can pace.

12:29:00 17 MR. POLLOCK: Michael --

12:29:01 18 A. I guess --

12:29:01 19 MR. POLLOCK: -- given what
12:29:03 20 happened --

12:29:04 21 Q. We'll work through the video.

12:29:05 22 A. Given the fact that I got -- okay. Given the
12:29:05 23 fact that I got two things completely wrong,
12:29:07 24 completely backwards and decided that an asset of the
12:29:11 25 trust was a liability of the trust, because I'm

12:29:14 1 looking at a lot of people. I'm answering a lot of
12:29:17 2 questions, let's take a break. Why don't we take a
12:29:20 3 lunch break? Can we eat?

12:29:21 4 Q. Well, how much time do you need for that?

12:29:24 5 MR. POLLOCK: 25 minutes.

12:29:26 6 A. Thirty minutes at the most.

12:29:28 7 MR. POLLOCK: 30 minutes. Mr. Bowen,
12:29:29 8 you had asked 15 minutes ago that his
12:29:30 9 counsel be responsible for reminding you
12:29:32 10 after 50 minutes.

12:29:33 11 THE WITNESS: We are now at 51
12:29:34 12 minutes.

12:29:36 13 MR. BOWEN: I'm just asking how much
12:29:37 14 time you need. That's all.

12:29:38 15 THE WITNESS: Thirty minutes.

12:29:39 16 MR. BOWEN: We're going to resume,
12:29:39 17 then, at two o'clock?

12:29:42 18 MR. POLLOCK: Yes.

12:29:43 19 MR. BOWEN: One o'clock your time?

12:29:45 20 THE WITNESS: Yes.

12:29:45 21 MR. BOWEN: Thank you, Mr. Oldner.
12:29:46 22 We'll see you then.

12:29:46 23 THE WITNESS: Thank you, Mr. Bowen.
12:29:46 24 I'm not trying to be contentious.

12:29:47 1 MR. BOWEN: No, don't worry about
12:29:51 2 that. I understand.

12:29:52 3 THE WITNESS: Thank you.

12:30:20 4 (Lunch break.)

13:03:28 5 BY MR. BOWEN:

13:05:24 6 Q. We're on the record. Mr. Oldner, I want to go
13:05:26 7 back to the topic where we took a break, which is the
13:05:30 8 assets and liabilities of the trust, to your
13:05:32 9 understanding.

13:05:34 10 The \$8.9 million of debt that the trust
13:05:39 11 has, with the nine percent interest, what's the total
13:05:45 12 amount of that debt, to your understanding, now?

13:05:49 13 A. To my understanding, that includes the
13:05:51 14 nine percent interest.

13:06:32 15 Q. And that interest has been accruing since when?

13:06:02 16 A. I don't know.

13:06:05 17 Q. But to your understanding, that's the only debt
13:06:08 18 that the trust has; is that right?

13:06:47 19 A. Yes.

13:06:49 20 Q. It doesn't owe money to lawyers or anybody
13:06:21 21 else; correct?

13:06:54 22 A. It would, it would -- the trust would pay the
13:06:24 23 expenses of REI. REI being the wholly owned
13:06:29 24 corporation owned by the trust, it would pay the
13:06:31 25 expenses of REI.

13:06:37 1 Q. But I thought you said REI was paying its
13:06:40 2 expenses by borrowing money?
13:06:42 3 A. It is.
13:07:18 4 Q. But ultimately that debt is owed by the trust?
13:06:49 5 A. Well, ultimately the money pays back, gets paid
13:06:52 6 back. So if REI collects the money, REI then takes
13:06:56 7 the expense by paying off its expenses, and the
13:06:59 8 remaining money gets distributed accordingly to the
13:06:59 9 beneficiaries, or it gets put back in the trust for
13:07:04 10 future beneficiaries. REI --
13:07:10 11 Q. And if the trust gets money --
13:07:13 12 A. Pardon me?
13:07:13 13 Q. And if the trust gets money, it has to pay
13:07:13 14 REI's debt?
13:07:15 15 A. No. REI will have already paid its debts
13:07:20 16 before the trust gets money.
13:07:22 17 Q. Because the trust owns all of the litigation
13:07:24 18 claim? I mean -- I'm sorry -- REI owns all of the
13:07:25 19 litigation claim?
13:07:58 20 A. REI owns all of the, owns the rights to that
13:07:30 21 litigation and has all of the litigation costs.
13:08:07 22 Q. And you, to the extent that you expect to
13:07:37 23 receive any payment, you expect to receive it in your
13:07:40 24 capacity as the director of Recovery Effort Inc.;
13:07:42 25 right?

13:07:45 1 A. That is correct.

13:08:24 2 Q. And you testified earlier that the trust, the
13:07:52 3 only assets of the trust are claims relating to the
13:07:54 4 \$32 million, which you call relating to a derivative
13:08:01 5 action, that's one?

13:08:02 6 A. Yes, sir.

13:08:02 7 Q. And the second assets are claims that the trust
13:08:04 8 has against a law firm; correct?

13:08:42 9 A. Two law firms, but yes, sir.

13:08:10 10 Q. Well, that's the Zeichner firm and the Wachtel
13:08:12 11 firm; correct?

13:08:47 12 A. Yes, sir.

13:08:47 13 Q. What efforts did you make to, to determine
13:08:22 14 whether there were other assets, other claims, legal
13:08:27 15 claims that the trust had?

13:08:28 16 MR. POLLOCK: Mr. Bowen, you are both
13:08:31 17 seeking discovery as to, that may go to
13:08:36 18 communications with lawyers, a, and, b,
13:08:38 19 about something that is of no relevance
13:08:41 20 whatsoever to the pending Motion to
13:08:43 21 Dismiss.

13:08:44 22 I repeat my objection, and I caution
13:08:45 23 the witness not to testify with respect to
13:08:49 24 privileged matters.

13:08:52 25 Q. Leaving aside communications with counsel, you

13:08:58 1 can, you can answer that question. What did you
13:09:00 2 do -- well, I'll change the question. I'll withdraw
13:09:01 3 that question.

13:09:01 4 The question is -- you can leave aside
13:09:02 5 questions, or communications with counsel -- what is
13:09:06 6 your understanding of what was done to determine
13:09:11 7 whether or not the trust has claims against other
13:09:17 8 parties?

13:09:18 9 MR. POLLOCK: Same objections.

13:09:25 10 A. That's what I got from counsel.

13:10:15 11 Q. To your understanding, did, did you or anyone
13:09:37 12 else on behalf of the trust make any inquiry into
13:09:44 13 whether or not the trust has claim against the prior
13:09:46 14 trustee?

13:09:48 15 MR. POLLOCK: Mr. Bowen, this line of
13:09:51 16 questioning is squarely, if anything,
13:10:00 17 related to the pending claims that are
13:10:02 18 pending to be sold.

13:10:04 19 If you have any reason that it
13:10:06 20 possibly relates to the pending Motion to
13:10:08 21 Dismiss, which was the subject of today's
13:10:12 22 deposition, I invite you to make a proffer
13:10:15 23 or move on.

13:10:16 24 Also, any analysis of legal claims
13:10:19 25 that Mr. Oldner made would inherently have

13:10:22 1 been made in conjunction with counsel.

13:10:24 2 And I find it beyond the pale that you
13:10:29 3 are asking him what analysis that he made
13:10:31 4 as far as legal claims, and what analysis
13:10:35 5 that he made separately from legal counsel,
13:10:38 6 it's inherently and inextricably wrapped up
13:10:43 7 when you are evaluating legal claim. I
13:10:45 8 would ask you for all of those reasons to
13:10:48 9 please move on.

13:10:49 10 MR. BOWEN: That's improper coaching
13:10:50 11 of the witness. I ask you to stop.

13:10:50 12 BY MR. BOWEN:

13:10:51 13 Q. Mr. Oldner, the question was what efforts did
13:10:54 14 you or anyone else make that you are aware of to
13:10:57 15 investigate whether there are claims that the trust
13:11:02 16 has, potential claims, against the prior trustee?

13:11:06 17 MR. POLLOCK: Same objections.

13:11:12 18 Q. You can answer.

13:11:12 19 A. On advice of counsel, I will -- actually,
13:11:15 20 that's all privileged. It's between me and counsel.

13:11:56 21 Q. Well, nobody has instructed you not to answer,
13:11:23 22 so are you refusing to answer the question?

13:11:27 23 A. No. I'm telling you that all decisions on any
13:11:28 24 lawsuits that were potentially available to the trust
13:11:34 25 were made between me and counsel.

13:11:36 1 Q. What counsel?

13:12:16 2 A. My counsel.

13:11:38 3 Q. Which one?

13:12:18 4 A. All of my counsel.

13:12:20 5 Q. So Mr. Pollock, Mr. -- I forget your, your
13:11:51 6 personal counsel. Mr. Jenson, is that his name?

13:11:56 7 A. Mr. Cullen.

13:11:57 8 Q. Cullen. So you're saying Mr. Pollock,
13:11:59 9 Mr. Cullen, Walden Macht, and Jay Ong, all of those
13:12:05 10 counsels were involved in evaluating whether there
13:12:08 11 were potential claims against Dalia Genger?

13:12:13 12 MR. POLLOCK: Objection;

13:12:13 13 mischaracterizes his testimony.

13:12:16 14 A. No counsel presented me with any evidence that
13:12:19 15 there was any wrongdoing, any money taken from the
13:12:22 16 trust, any wrong on behalf of the trust, excerpt for
13:12:25 17 the \$32 million that was wrongfully taken in the
13:12:29 18 derivative action.

13:12:30 19 Q. Did you, yourself, look in to see how the prior
13:12:38 20 trustee conducted the trust?

13:12:38 21 MR. POLLOCK: Mr. Bowen, I repeat my
13:12:43 22 objection that any analysis of the previous
13:12:46 23 trustee's action and legal claim against
13:12:50 24 the previous trustee is inextricably
13:12:52 25 wrapped up with the privilege, and also of

13:12:54 1 no relevance to the Motion to Dismiss. I
13:12:54 2 respectfully ask that you move on.

13:13:36 3 Q. I'll repeat the question. Did you, yourself,
13:13:01 4 personally undertake any review of the conduct by the
13:13:07 5 prior trustee with respect to the trust?

13:13:45 6 A. Other than reading matters that are public
13:13:17 7 record, I did not.

13:13:18 8 Q. You, you read all matters that are public
13:13:21 9 record pertaining to the trust?

13:13:22 10 A. No.

13:13:23 11 MR. POLLOCK: Objection;
13:13:23 12 mischaracterizes the testimony.

13:13:32 13 Q. You can answer. Did you read everything?

13:14:02 14 A. No.

13:13:35 15 Q. What did you read?

13:13:36 16 A. I don't remember.

13:13:36 17 Q. Did you see that the prior trustee did an
13:13:39 18 accounting of the assets and liabilities of the
13:13:41 19 trust?

13:14:11 20 A. No.

13:14:12 21 Q. You're not aware that the prior trustee did an
13:13:47 22 accounting of the assets and liabilities in the
13:13:49 23 trust?

13:14:20 24 A. I am not aware of that.

13:13:50 25 Q. Is this the first time anyone has ever

13:13:57 1 suggested to you that the prior trustee of the trust
13:13:59 2 did an accounting of the assets and liabilities?

13:14:03 3 A. Please ask the question again. I don't
13:14:05 4 understand what you're asking.

13:14:35 5 Q. Is this the first time anyone ever suggested to
13:14:10 6 you that the prior trustee did an accounting of the
13:14:14 7 assets and liabilities of the trust?

13:14:16 8 MR. POLLOCK: Mr. Bowen, are you
13:14:19 9 asking him about matters that are on the
13:14:21 10 appellate docket? Why are we doing this?

13:14:24 11 MR. HERSCHMANN: Mr. Pollock --

13:14:24 12 MR. POLLOCK: This has nothing to do
13:14:24 13 with --

13:14:26 14 MR. HERSCHMANN: Mr. Pollock, this is
13:14:26 15 Eric Herschmann. I do not have time for
13:14:29 16 all of this.

13:14:29 17 I don't know what you do with your
13:14:30 18 practice. I just don't have time for this.
13:14:33 19 Can you please just stop it?

13:14:36 20 You're just wasting everyone's time.
13:14:37 21 He's going to be back yet another day
13:14:40 22 because of it.

13:14:40 23 MR. BOWEN: Mr. Pollock --

13:14:40 24 MR. DELLAPORTAS: Mr. Herschmann, your
13:14:40 25 behavior is inappropriate.

13:14:40 1 MR. BOWEN: -- you are really
13:14:42 2 blatantly coaching the witness, and it's
13:14:45 3 really, it's, it's really improper. So
13:14:46 4 please stop.

13:14:48 5 MR. DELLAPORTAS: I would ask
13:14:50 6 Mr. Herschmann to stop screaming in the
13:14:50 7 deposition.

13:14:50 8 MR. HERSCHMANN: Mr. Dellaportas, a
13:14:50 9 judge can hear --

13:14:50 10 MR. BOWEN: There's nobody screaming.

13:14:50 11 MR. DELLAPORTAS: It's really
13:14:50 12 inappropriate.

13:15:08 13 MR. HERSCHMANN: A judge can hear --

13:15:28 14 MR. BOWEN: There's nobody screaming.

13:15:29 15 COURT REPORTER: I can't understand
13:15:29 16 anyone.

13:15:29 17 MR. DELLAPORTAS: We have a recording
13:15:29 18 which is recording the screaming, so
13:15:29 19 it's --

13:15:29 20 MR. HERSCHMANN: Right. So --

13:15:29 21 MR. DELLAPORTAS: -- beta transcript.

13:15:29 22 MR. HERSCHMANN: John, I'm happy to --

13:15:29 23 MR. DELLAPORTAS: We all understand
13:15:29 24 that --

13:15:29 25 MR. BOWEN: I'm asking --

13:15:29 1 MR. DELLAPORTAS: -- Mr. Herschmann is
13:15:29 2 very busy --

13:15:29 3 MR. BOWEN: I'm asking you to stop,
13:15:29 4 please. You're interrupting my deposition.

13:15:29 5 MR. DELLAPORTAS: -- more busy than
13:15:29 6 the rest of us, but that --

13:15:29 7 MR. BOWEN: I'm --

13:15:29 8 MR. DELLAPORTAS: -- to scream at
13:15:29 9 people. It's really --

13:15:29 10 COURT REPORTER: I can't understand
13:15:29 11 anyone.

13:15:29 12 MR. POLLOCK: Hey, guys, one at a time
13:15:29 13 for the court reporter, please.

13:15:29 14 COURT REPORTER: That whole time I
13:15:29 15 didn't understand anything because the
13:15:29 16 speaker was cutting out because y'all were
13:15:29 17 all on top of each other, so I didn't get
13:15:29 18 that whole conversation.

13:15:29 19 MR. BOWEN: That's okay, Janess.
13:15:29 20 Don't worry about it.

13:15:29 21 MR. DELLAPORTAS: This is John
13:15:30 22 Dellaportas.

13:15:32 23 MR. BOWEN: Mr. Dellaportas, I'm
13:15:32 24 asking you to stop speaking.

13:15:35 25 MR. DELLAPORTAS: Well, I'm saying no,

13:15:35 1 and I have the right to speak.

13:15:35 2 MR. BOWEN: So I'm asking you to stop.

13:15:37 3 MR. DELLAPORTAS: I'm asking you to
13:15:38 4 stop talking over me, so I can state my
13:15:42 5 objection, and then you can go on with your
13:15:44 6 questions.

13:15:45 7 So this is John Dellaportas. I'm
13:15:46 8 counsel to Sagi Genger in the bankruptcy.
13:15:46 9 Mr. Herschmann started screaming
13:15:49 10 uncontrollably at the witness.

13:15:50 11 MR. BOWEN: There was no screaming.
13:15:54 12 You have to stop that kind of stuff.

13:15:55 13 MR. DELLAPORTAS: We have --

13:15:55 14 MR. BOWEN: There's a video record,
13:15:55 15 Mr. Dellaportas.

13:15:56 16 MR. DELLAPORTAS: We do have --

13:15:57 17 MR. BOWEN: Please stop with the
13:15:58 18 blatant misrepresentation.

13:15:58 19 MR. DELLAPORTAS: Mr. Bowen, can you
13:15:58 20 not interrupt me?

13:15:59 21 MR. BOWEN: You have to stop. This
13:16:01 22 is, this is embarrassing for you.

13:16:03 23 MR. DELLAPORTAS: Mr. Bowen --

13:16:04 24 MR. BOWEN: Please stop.

13:16:04 25 MR. DELLAPORTAS: -- can you not

13:16:04 1 interrupt me, so I can finish my objection?

13:16:06 2 MR. BOWEN: No, not when you're saying

13:16:08 3 blatant falsehoods. You need to stop.

13:16:09 4 MR. HERSCHMANN: The objection is --

13:16:09 5 you want an objection? There's a video.

13:16:11 6 The judge can watch it.

13:16:12 7 All I'm saying is -- and I'm sorry you

13:16:15 8 weren't here, John, earlier -- this has

13:16:17 9 been going on for several hours. There's

13:16:19 10 nothing --

13:16:19 11 MR. BOWEN: That's a good point.

13:16:21 12 Mr. Dellaportas, you're probably unaware of

13:16:23 13 the record that's been, that's made here,

13:16:26 14 and I'll give you some leeway, because

13:16:27 15 you're unaware of it.

13:16:29 16 MR. DELLAPORTAS: When --

13:16:29 17 MR. BOWEN: But I need to ask you, I

13:16:29 18 need to ask you, the same way that I asked

13:16:31 19 Mr. Pollock repeatedly today, throughout

13:16:34 20 the entire day, to limit his objection to

13:16:36 21 the word "Objection." That's all you need.

13:16:39 22 MR. DELLAPORTAS: Mr. Bowen --

13:16:39 23 MR. BOWEN: You don't need to make a

13:16:40 24 speaking objection.

13:16:42 25 MR. DELLAPORTAS: -- when you're ready

13:16:42 1 to --

13:16:42 2 MR. BOWEN: I am going to give you the
13:16:43 3 same request and ask you to do the same.

13:16:46 4 MR. DELLAPORTAS: Mr. Bowen, I'm ready
13:16:46 5 to stay here all day until you're done
13:16:46 6 talking, and then I'm going to state my
13:16:49 7 objection.

13:16:50 8 You have no right to interrupt my
13:16:52 9 objection. So are you ready to let me
13:16:54 10 state my objection, or are you going to
13:16:56 11 scream over me, like your colleague? Let
13:16:58 12 me know.

13:16:59 13 MR. BOWEN: No, but I'm not going to
13:17:00 14 let you say your objection. I want to --

13:17:00 15 MR. DELLAPORTAS: You're not going to
13:17:00 16 let --

13:17:00 17 MR. BOWEN: -- continue with my
13:17:00 18 questioning.

13:17:00 19 MR. DELLAPORTAS: -- me state my
13:17:04 20 objection, is what you're saying?

13:17:05 21 MR. BOWEN: Well, I'm sorry. You're
13:17:05 22 not allowed to just do --

13:17:06 23 MR. DELLAPORTAS: -- not going to let
13:17:06 24 me state my objection.

13:17:06 25 MR. BOWEN: -- whatever you want to

13:17:07 1 do. There are certain rules that apply,
13:17:07 2 and I'm asking you to abide by the rules.

13:17:10 3 MR. DELLAPORTAS: And one of those
13:17:10 4 rules is I'm allowed to articulate my
13:17:11 5 objections.

13:17:13 6 MR. BOWEN: No, you're not. You're
13:17:14 7 not --

13:17:14 8 MR. DELLAPORTAS: I'm not allowed to
13:17:14 9 articulate my objections?

13:17:14 10 MR. BOWEN: You can state "Objection"
13:17:15 11 and --

13:17:16 12 MR. DELLAPORTAS: You don't get to --

13:17:16 13 MR. BOWEN: -- and a basis for it --

13:17:16 14 MR. DELLAPORTAS: You don't get --

13:17:16 15 MR. BOWEN: -- in a few words, but
13:17:16 16 that's it.

13:17:22 17 MR. DELLAPORTAS: -- to scream over me
13:17:22 18 so the reporter doesn't get to capture it.
13:17:22 19 That's just never proper.

13:17:23 20 MR. BOWEN: Well, I want to make sure
13:17:24 21 you understand the request that I'm making
13:17:25 22 and you understand the history, because you
13:17:26 23 weren't here for the entire day.

13:17:28 24 MR. DELLAPORTAS: I'm not --

13:17:28 25 MR. BOWEN: So I'm trying to give you

13:17:30 1 a sense of what's happening.

13:17:31 2 MR. DELLAPORTAS: If Mr. Herschmann is
13:17:32 3 frustrated, that's fine, but that's not an
13:17:36 4 excuse to start bellowing like a mad man.

13:17:36 5 MR. BOWEN: Well, first of all, you're
13:17:39 6 mischaracterizes the record, and I'm not
13:17:40 7 going to just let that happen with no
13:17:43 8 comment. So I'm going to --

13:17:43 9 MR. DELLAPORTAS: There's a video.

13:17:43 10 MR. BOWEN: -- stop speaking now. I'm
13:17:44 11 going to turn off my, my camera --

13:17:46 12 MR. DELLAPORTAS: Wonderful.

13:17:46 13 MR. BOWEN: -- and I'm going to wait
13:17:47 14 until you finish. But whatever time you're
13:17:49 15 using is counting against the witness.
13:17:52 16 It's not counting against the time that we
13:17:54 17 were allotted to take this deposition.

13:17:55 18 MR. DELLAPORTAS: That's between --

13:17:55 19 MR. BOWEN: You may, you may proceed.

13:17:57 20 MR. DELLAPORTAS: -- you and Mr.
13:17:57 21 Pollock.

13:17:57 22 MR. BOWEN: You may proceed.

13:17:57 23 MR. DELLAPORTAS: I don't care.

13:17:57 24 MR. BOWEN: You may proceed.

13:17:58 25 MR. HERSCHMANN: Mr. Dellaportas,

13:17:58 1 you're really -- you're going to object to
13:18:00 2 my conversation with Mr. Pollock; right?

13:18:02 3 And Mr. Pollock is sitting there, and
13:18:05 4 it's all on the video. We can go to the
13:18:07 5 judge. Let's just keep going.

13:18:08 6 The witness has said he has an issue
13:18:10 7 that he wants to get up every 50 minutes or
13:18:13 8 so to take a break. Let's just keep going.

13:18:15 9 We have a video. Play the video to
13:18:17 10 the judge. Do whatever you want. Let's
13:18:19 11 just please keep going. That's all.

13:18:20 12 MR. DELLAPORTAS: Can I say --

13:18:20 13 MR. POLLOCK: Hey, guys?

13:18:21 14 MR. DELLAPORTAS: -- or are you guys
13:18:21 15 going to scream over me for the rest of the
13:18:21 16 afternoon?

13:18:24 17 MR. POLLOCK: Hey guys, this is Adam
13:18:25 18 Pollock. If I can ask --

13:18:30 19 MR. DELLAPORTAS: It looks like I
13:18:30 20 finally get the privilege of speaking, so
13:18:30 21 this is John Dellaportas. I'm the counsel
13:18:34 22 for Sagi Genger.

13:18:34 23 The witness is being very polite here,
13:18:37 24 is trying his best to answer the questions,
13:18:39 25 from what I can see.

13:18:41 1 There's no reason for Mr. Herschmann
13:18:43 2 to scream at the witness or his counsel,
13:18:45 3 particularly when he's not undertaking the
13:18:49 4 questions.

13:18:49 5 The interpretation here was because
13:18:51 6 Mr. Herschmann interrupted the questions,
13:18:53 7 never appropriate.

13:18:55 8 I got a big flavor of it yesterday
13:18:57 9 when his wife was testifying, and it was
13:18:57 10 frustrating then. It's even more
13:18:57 11 frustrating now.

13:19:01 12 So I would ask that one person
13:19:03 13 question at a time. That's Mr. Bowen.
13:19:03 14 When Mr. Bowen is done, I've got some
13:19:05 15 questions I'd like to ask Mr. Oldner.

13:19:10 16 MR. HERSCHMANN: We'll go in order,
13:19:11 17 John, as we have discussed beforehand
13:19:14 18 amongst the attorneys, and I'll have some
13:19:15 19 questions when the times comes. Let's deal
13:19:17 20 with that later. Thank you.

13:19:17 21 Mike, please keep going.

13:19:19 22 MR. DELLAPORTAS: Well, I'd like to go
13:19:20 23 next, so.

13:19:22 24 MR. HERSCHMANN: Well, I appreciate
13:19:23 25 that, but you know what, John, we've

13:19:24 1 already arranged it, so you should have
13:19:24 2 mentioned that beforehand.

13:19:25 3 MR. DELLAPORTAS: Well, I'm sorry. I
13:19:25 4 didn't --

13:19:25 5 MR. BOWEN:

13:19:26 6 BY MR. BOWEN:

13:19:26 7 Q. Mr. Oldner, we're going to --

13:19:29 8 MR. DELLAPORTAS: -- as to who goes
13:19:29 9 next.

13:19:29 10 MR. BOWEN:

13:19:29 11 Q. -- resume the question and answer.

13:19:29 12 MR. DELLAPORTAS: I would like to go
13:19:29 13 next. I'm happy to flip a coin for you, if
13:19:31 14 you think that's appropriate.

13:19:32 15 MR. BOWEN: We're not having this
13:19:33 16 discussion in the middle of my examination.
13:19:35 17 You need to stop, Mr. Dellaportas.

13:19:36 18 BY MR. BOWEN:

13:19:38 19 Q. Mr. Oldner --

13:19:38 20 MR. DELLAPORTAS: Well, stop
13:19:38 21 interrupting me. For the future, when I
13:19:40 22 state an objection, you don't talk over me,
13:19:42 23 so the reporter can't hear my objection.
13:19:45 24 If we do that again, we're going to call
13:19:46 25 the judge. Understand --

13:19:47 1 MR. BOWEN: Mr. Dellaportas, I'm
13:19:47 2 asking you to stop. You're interrupting,
13:19:49 3 and you're interfering with this
13:19:51 4 deposition. Please stop.

13:19:51 5 BY MR. BOWEN:

13:19:51 6 Q. Mr. Oldner --

13:19:54 7 MR. POLLOCK: Hey, guys, if I may
13:19:56 8 state for the record two things. One is,
13:19:58 9 Mr. Bowen, I would respectfully ask on
13:20:00 10 behalf of the stenographer so that we can
13:20:01 11 get a clear record that you stop speaking
13:20:04 12 over me, that you stop speaking over Mr.
13:20:06 13 Dellaportas, and that you stop speaking
13:20:08 14 over anybody else, because we will get a
13:20:11 15 clean record if you -- it's challenging
13:20:15 16 during Zoom -- if you would respect each
13:20:18 17 person to state their objection, and -- so
13:20:21 18 the stenographer can get it. That's a.

13:20:24 19 B is, Mr. Herschmann, if you continue
13:20:27 20 to scream at me, and if you continue to
13:20:29 21 scream at my client, I will immediately end
13:20:31 22 this deposition.

13:20:32 23 That kind of conduct has no, no place
13:20:37 24 in any deposition, let alone in the
13:20:39 25 southern decorum of Arkansas and I will not

13:20:41 1 hesitate to call the federal judge here and
13:20:44 2 seek a Protective Order barring you from
13:20:47 3 participating any further in, with your
13:20:51 4 screaming interruptions or whatsoever.

13:20:55 5 MR. HERSCHMANN: All right.

13:20:55 6 Mr. Pollock, if you're done, let's move
13:20:59 7 forward. Thank you.

13:20:59 8 BY MR. BOWEN:

13:21:00 9 Q. Mr. Oldner --

13:21:00 10 A. Yes, sir.

13:21:01 11 Q. -- I was asking you whether --

13:21:04 12 A. Let's get back into the flow of what we were
13:21:05 13 doing.

13:21:06 14 Q. -- this is the first time anyone has ever
13:21:09 15 suggested to you that the prior trustee has done an
13:21:13 16 accounting of the debts, or the liabilities, and the
13:21:16 17 assets of the trust?

13:21:18 18 MR. POLLOCK: Same objection.

13:21:21 19 A. Mr. Bowen, I do not understand your question,
13:21:30 20 so I don't know how to answer it. Will you please
13:21:33 21 state it in a different format for me?

13:21:36 22 Q. Do you understand what an accounting is?

13:21:39 23 A. Yes, Mr. Dellaportas -- I mean, Mr. Bowen -- I
13:21:43 24 understand it very well. I don't understand your
13:21:45 25 question as it relates to it.

13:22:19 1 Q. Well, have you, have you ever been -- have you
13:21:51 2 ever seen a written accounting done by the prior
13:21:56 3 trustee of the assets and liabilities of the trust?

13:22:00 4 A. That's a question I can answer. The answer is
13:22:03 5 no, I have not.

13:22:37 6 Q. Before today has anyone ever said to you that
13:22:09 7 there is a written accounting that was done by the
13:22:12 8 prior trustee?

13:22:14 9 MR. POLLOCK: You're asking for
13:22:15 10 non-privileged communications?

13:22:17 11 Q. All communications.

13:22:19 12 A. I can't answer for privileged communications.

13:22:27 13 Q. Well, you can answer if any -- I'm asking about
13:22:30 14 your awareness. I'm not asking you about
13:22:33 15 communications. Let me try it again.

13:22:35 16 A. Okay.

13:22:35 17 Q. The question is --

13:22:35 18 A. Help me understand the question.

13:22:36 19 Q. -- before today -- let me ask -- let me just
13:22:37 20 ask the question. Have you ever been aware, whether
13:22:40 21 you've seen it or not, have you ever been aware of an
13:22:43 22 accounting, a written accounting done by the prior
13:22:46 23 trustee?

13:22:47 24 A. I have not.

13:23:23 25 Q. And before me saying it in this deposition has

13:22:52 1 anybody else ever suggested to you that a written
13:22:57 2 accounting had been done by the prior trustee?

13:23:00 3 MR. POLLOCK: I object --

13:23:02 4 A. That's privileged.

13:23:03 5 MR. POLLOCK: -- on the grounds it
13:23:05 6 seeks privileged communication.

13:23:07 7 Q. Leaving aside communications with lawyers has
13:23:10 8 anyone ever suggested that to you?

13:23:16 9 A. I'm trying to understand the question. Other
13:23:19 10 than having that discussion with my lawyer, who else
13:23:22 11 would have suggested that?

13:23:25 12 Q. I'm asking you did Sagi suggest it? Did Robin
13:23:30 13 Rodriguez suggest it?

13:23:32 14 A. Did Sagi suggest it, no. Did Robin suggest it,
13:23:36 15 no.

13:24:09 16 Q. And did your lawyers -- this is a yes-or-no --
13:23:40 17 I'm only asking for a yes-or-no answer. Did some
13:23:43 18 lawyer before today suggest to you that there is a
13:23:47 19 written accounting done by the prior trustee?

13:23:50 20 MR. POLLOCK: Objection.

13:23:51 21 Q. Yes or no?

13:23:52 22 MR. POLLOCK: I direct the witness not
13:23:53 23 to answer the question, which squarely
13:23:56 24 calls for communications with counsel.

13:24:30 25 Q. It's a yes-or-no question. I'm not asking for

13:24:05 1 the substance of the communication.

13:24:09 2 MR. POLLOCK: The yes-or-no question
13:24:10 3 squarely calls for communication with
13:24:12 4 counsel, and I direct the witness not to
13:24:15 5 answer.

13:24:15 6 And I also, respectfully, Mr. Bowen,
13:24:17 7 don't ask for privileged, for
13:24:19 8 communications with counsel and move on.

13:24:54 9 Q. Mr. Oldner, are you following the instruction
13:24:25 10 not to answer?

13:24:27 11 A. I am following my counsel's instruction not to
13:24:29 12 answer.

13:24:30 13 Q. Do you think as the incoming trustee, had you
13:24:34 14 known that there was a written accounting, you would
13:24:37 15 have wanted to have seen it?

13:24:38 16 A. That calls for a would've-could've-should've
13:24:44 17 speculation. I have no idea how I would have acted.

13:24:49 18 Q. You can't answer that question?

13:24:51 19 A. I would like as much information as I can have,
13:24:54 20 but that may answer a different question.

13:25:28 21 Q. So if -- can you think of a reason, sitting
13:25:01 22 here today, if you had known there was a written
13:25:04 23 accounting, why you would not have obtained a copy of
13:25:08 24 it?

13:25:08 25 MR. POLLOCK: Objection.

13:25:13 1 Q. You can answer.

13:25:15 2 A. No, I can think of no reason that if I had
13:25:19 3 known that there was a written accounting I would not
13:25:21 4 have obtained a copy of it.

13:25:25 5 Q. Now that you know that one exists are you going
13:25:28 6 to obtain a copy of it?

13:25:59 7 A. I do not know that one exists. Are you telling
13:25:33 8 me one exists?

13:25:39 9 Q. Well, I'm certainly suggesting to you that one
13:25:42 10 exists. I'm not here to testify, but now that you
13:25:45 11 know that there's a possibility that a written
13:25:47 12 accounting exists, are you going to go look for it?

13:25:50 13 MR. POLLOCK: Mr. Bowen --

13:25:52 14 A. That question is nonsensical. I've told you
13:25:56 15 everything I know on that.

13:25:59 16 Q. Are you concerned that there's a, an accounting
13:26:01 17 may exist, a written accounting by the prior trustee
13:26:04 18 that you never saw?

13:26:06 19 MR. POLLOCK: Mr. Bowen, again, you
13:26:06 20 are getting directly into communication
13:26:10 21 with counsel, a, and, b is this has nothing
13:26:13 22 to do with the Motion to Dismiss.

13:26:15 23 If anything, it only has something to
13:26:17 24 do with the claims that are proposed to be
13:26:21 25 sold to the entity related to

13:26:23 1 Mr. Herschmann, and if there is any
13:26:25 2 possible relevance, then please make a
13:26:29 3 proffer.

13:26:30 4 And if not, then what we'll do is
13:26:32 5 we'll call the federal judge here in
13:26:35 6 Arkansas and tell her two things.

13:26:36 7 One is that it appears to have no
13:26:40 8 possible relevance, and, b, you completely
13:26:43 9 refuse to tell us what potential relevance
13:26:45 10 it has to the Motion to Dismiss, and,
13:26:47 11 therefore, we're, we're taking up her time,
13:26:50 12 the federal judge in Arkansas, because you
13:26:52 13 won't make a simple proffer as to its
13:26:54 14 relevance.

13:26:56 15 BY MR. BOWEN:

13:27:23 16 Q. Mr. Oldner, the question is now that you're
13:27:00 17 aware that a written accounting exists, or may exist,
13:27:04 18 are you going to make any effort to go look at it?

13:27:07 19 MR. POLLOCK: Mr. Bowen, move on.

13:27:09 20 Q. You can answer the question, sir.

13:27:11 21 A. Under advice of counsel, I am not answering
13:27:13 22 that question.

13:27:14 23 Q. You refuse to answer --

13:27:14 24 MR. POLLOCK: Mr. Bowen --

13:27:14 25 Q. You refuse to answer the question?

13:27:16 1 A. On the advice of counsel, I'm not answering
13:27:19 2 that question.

13:27:19 3 Q. What --

13:27:19 4 MR. POLLOCK: Mr. Bowen, you're
13:27:20 5 harassing the witness.

13:27:22 6 Q. What --

13:27:22 7 MR. BOWEN: Mr. Pollock, I'm going to
13:27:24 8 ask you again to quit interrupting the
13:27:26 9 testimony and interfering with my line of
13:27:28 10 examination.

13:27:29 11 BY MR. BOWEN:

13:27:29 12 Q. Mr. Oldner, what other efforts did you make to
13:27:36 13 understand how Dalia Genger conducted herself as the
13:27:40 14 trustee for the trust?

13:27:46 15 A. I was appointed by Dalia Genger as trustee. I
13:27:51 16 had my attorneys investigate what wrongs had been
13:27:56 17 done to the trust. The attorneys came back to me
13:28:01 18 with --

13:28:01 19 MR. POLLOCK: Hey, hey, pause. Don't
13:28:03 20 testify about what your attorneys came back
13:28:05 21 and told you.

13:28:06 22 A. Okay. That's privileged. I'm sorry.

13:28:08 23 Q. So the trustees were paid by Recovery Effort
13:28:12 24 Inc. in conducting that investigation? I'm sorry.
13:28:15 25 The lawyers were paid by Recovery Effort in

13:28:19 1 conducting that investigation?

13:28:20 2 A. I'm, I'm -- that's back to privilege.

13:29:01 3 Q. You're saying it's privileged who paid the
13:28:25 4 lawyers?

13:29:05 5 A. All of the lawyers have been paid for by
13:28:29 6 Recovery Effort Inc.

13:29:11 7 Q. Okay. So did you give Dalia Genger -- as the
13:28:41 8 successor trustee did you give Dalia Genger a release
13:28:45 9 of all liability for her role as the prior trustee?

13:28:49 10 A. I gave her a release, yes.

13:29:23 11 Q. Is that release in writing?

13:29:28 12 A. It is.

13:28:57 13 Q. And where is that?

13:28:58 14 A. I would assume it's in Dalia Genger's
13:29:04 15 possession.

13:29:05 16 Q. Did you keep a copy of it?

13:29:07 17 A. I did.

13:29:34 18 Q. Did you produce it?

13:29:10 19 A. I think my counsel has it.

13:29:38 20 Q. But it wasn't produced; was it?

13:29:17 21 MR. POLLOCK: Mr. Bowen, if you want
13:29:19 22 to know what's produced, check the document
13:29:21 23 production, or we can talk about it
13:29:23 24 separately.

13:29:24 25 MR. BOWEN: I'm asking for this

13:29:26 1 witness's knowledge of what was produced.

13:29:29 2 MR. POLLOCK: You know, you're -- as
13:29:29 3 you know, the attorneys handle the document
13:29:31 4 production.

13:29:32 5 If you want to know what's in the
13:29:34 6 document production, I invite you to call
13:29:37 7 me up, or just look at it yourself.

13:29:40 8 BY MR. BOWEN:

13:29:40 9 Q. Mr. Oldner, do you know yourself that this
13:29:43 10 release was produced by you?

13:29:46 11 A. I know that any document in my possession
13:29:49 12 relating to the Orly Genger Trust, to REI, or to any
13:29:54 13 action concerning that was delivered to Adam Pollock,
13:29:57 14 my attorney. What Adam Pollock delivered to you, I
13:29:59 15 do not know.

13:30:00 16 MR. POLLOCK: And, Mr. Bowen, as you
13:30:02 17 know, I had an email exchange with Mr.
13:30:02 18 Kurland with respect to the topics of the
13:30:07 19 document production.

13:30:10 20 I sent you a letter -- sorry. I sent
13:30:12 21 Mr. Kurland a letter on that. If you want
13:30:15 22 any subsequent document production, I
13:30:17 23 invite you to write me a letter or
13:30:19 24 otherwise contact me, and I'm happy to have
13:30:22 25 that discussion with you, presuming, you

13:30:25 1 know, as I've said to you before, that you
13:30:27 2 can make any kind of showing about the
13:30:29 3 relevance to the pending Motion to Dismiss.

13:30:33 4 Q. Mr. Oldner, is it your testimony that you kept
13:30:36 5 a copy of the release?

13:30:38 6 A. My testimony is that any copies I have in, of
13:30:41 7 any information that had to do with the trust up to
13:30:46 8 the time of, the last Requests for Production was
13:30:51 9 made have been turned over to Adam Pollock. What he
13:30:55 10 delivered to you, I do not know.

13:30:57 11 Q. Okay. I'm sorry, sir. I'm asking a different
13:30:59 12 question. I think we were miscommunicating a little
13:31:02 13 bit.

13:31:02 14 A. Okay.

13:31:03 15 Q. Let me try and focus your attention.

13:31:05 16 A. Okay.

13:31:06 17 Q. The only question I'm asking about is the
13:31:08 18 release. I'm not asking about any other documents.

13:31:11 19 And my --

13:31:12 20 A. (Witness coughs.)

13:31:12 21 Q. You okay?

13:31:12 22 A. Oh yeah, I'm fine. I have a cough drop. Thank
13:31:16 23 you very much.

13:31:17 24 Q. Okay. And my only question is did you keep a
13:31:19 25 copy of that release yourself?

13:31:21 1 A. I have kept a copy of every pertinent piece of
13:31:25 2 information.

13:31:25 3 Q. Okay. But --

13:31:27 4 A. Your asking --

13:31:28 5 Q. I don't mean to interrupt you, but I'm not
13:31:30 6 asking you about every piece of pertinent

13:31:32 7 information. I really want you to focus on my

13:31:36 8 question. It's really just about one piece of paper,

13:31:37 9 or one document. The release, did you kind a copy of
13:31:41 10 that?

13:32:07 11 A. To the best of my knowledge, I have a copy of
13:31:43 12 that.

13:32:11 13 Q. And how long is it? Is it one page, or is it
13:31:46 14 multiple pages?

13:31:47 15 A. I have no idea.

13:31:48 16 Q. What did it release?

13:31:50 17 A. I have no idea.

13:31:52 18 Q. Was it an --

13:31:52 19 A. I knew when I signed it -- I read, I read it
13:31:54 20 when I signed it.

13:32:22 21 Q. Well, I'm asking you for the best memory you
13:31:59 22 have. Was it an unconditional general release?

13:32:02 23 MR. POLLOCK: Objection; calls for a
13:32:03 24 legal conclusion.

13:32:05 25 A. Please tell me what an unconditional --

13:32:10 1 MR. POLLOCK: No, he doesn't need to
13:32:11 2 tell you. He's not testifying. He's
13:32:12 3 asking --

13:32:13 4 Q. Well, Mr. Oldner, I --

13:32:13 5 MR. POLLOCK: -- you legal questions.

13:32:14 6 Q. -- I, I don't, I don't mean this to be
13:32:17 7 difficult, and I'm not, I'm not trying to imply
13:32:19 8 anything by my question. You've, as a business man
13:32:22 9 you've been involved with general releases in the
13:32:25 10 past; no?

13:32:27 11 A. Very rarely.

13:33:20 12 Q. Have, have you ever been involved in any
13:32:33 13 litigation, aside from litigation relating to the
13:32:36 14 Gengers?

13:32:38 15 A. Oh yes.

13:32:38 16 Q. How many times?

13:32:40 17 A. Ten or more.

13:33:31 18 Q. As a plaintiff?

13:32:48 19 A. Sometimes a plaintiff, sometimes a defendant.

13:32:50 20 Q. How many times as a plaintiff?

13:33:35 21 A. Four or five, would be my guess, and that's
13:32:53 22 just a guess.

13:32:54 23 Q. What kind of claims were they?

13:32:59 24 A. Car wreck, hit and run, tort of outrage, a suit
13:33:13 25 against a, for an illegal sales tax.

13:34:05 1 Q. And you worked with lawyers in those lawsuits?

13:33:26 2 A. No. I, I was the plaintiff in those lawsuits.

13:33:30 3 Q. But did you have legal counsel, or were you

13:33:30 4 operating on your own behalf?

13:33:30 5 A. No. No, I had legal counsel.

13:33:36 6 Q. Did you settle those claims?

13:34:35 7 A. Two of them were settled. One of them I

13:33:56 8 prevailed; that was the tort of outrage. And on the

13:34:02 9 sales tax issue, the county prevailed.

13:34:10 10 Q. And these were lawsuits in the courts of

13:34:12 11 Arkansas?

13:34:17 12 A. Yes.

13:34:57 13 Q. And they were brought in your own name?

13:35:02 14 A. Yes.

13:35:02 15 Q. How long ago are we talking were these, were

13:34:27 16 these lawsuits?

13:34:28 17 A. Eighties and nineties. One of them --

13:34:31 18 actually, the car wreck was from 2013 to 2017.

13:34:42 19 Q. You've also been a defendant in lawsuits?

13:34:46 20 A. Yes.

13:34:47 21 Q. Personally?

13:34:47 22 A. Yes.

13:34:48 23 Q. What kind of claims were those?

13:34:50 24 A. I was sued by an insurance company in my

13:34:55 25 capacity as a broker, or, actually, by a company

13:35:00 1 operating as if they were an insurance company but
13:35:03 2 without a license.

13:35:41 3 Q. And the other lawsuits against you?

13:35:11 4 A. That's, that's the only one that I can think of
13:35:16 5 offhand.

13:35:49 6 Q. How long ago was that?

13:35:19 7 A. 1988.

13:35:22 8 Q. That was in Arkansas?

13:35:23 9 A. It was.

13:35:55 10 Q. And did you have legal counsel?

13:35:27 11 A. Yes.

13:35:28 12 Q. Was that case settled?

13:35:30 13 A. No.

13:36:00 14 Q. So in conjunction with those settlements of, of
13:35:35 15 litigation, did you have an understanding of what a
13:35:38 16 general release is?

13:35:41 17 A. Under no circumstance.

13:35:43 18 Q. So you --

13:35:43 19 A. I really don't know --

13:35:45 20 Q. -- did not --

13:35:45 21 A. -- what -- I really don't know what you're
13:35:45 22 talking about. Please help me.

13:35:48 23 Q. Okay. So you don't have a, you don't have the
13:35:50 24 concept of a general release, or a general mutual
13:35:53 25 release?

13:35:55 1 MR. POLLOCK: Mr. Bowen, to the extent
13:35:56 2 that you're asking the witness to define
13:35:58 3 legal terms, it's just harassing and
13:36:01 4 unnecessary. Please move on.

13:36:04 5 MR. BOWEN: I'm not asking him to
13:36:05 6 define it. I'm asking Mr. Oldner, given
13:36:07 7 his experience in multiple litigations, if
13:36:08 8 he has an understanding of the concept of
13:36:12 9 what's generally known as either a general
13:36:16 10 release or a general mutual release.

13:36:18 11 BY MR. BOWEN:

13:36:18 12 Q. It's a simple "yes" or "no," sir.

13:36:21 13 A. No.

13:36:22 14 Q. I'm having trouble hearing you. Did you say
13:36:27 15 "no"?

13:36:27 16 A. No.

13:36:28 17 Q. Okay. So you would need to see the release
13:36:35 18 that was given by you as the successor trustee to
13:36:39 19 Dalia Genger as the prior trustee to remember what it
13:36:43 20 means; is that right?

13:36:44 21 A. I have a general idea what it means --

13:36:48 22 Q. What was that?

13:36:48 23 A. -- but to see what it --

13:36:52 24 Q. What was the general idea?

13:36:53 25 A. The general idea is that she's released from

13:36:58 1 what she did of, from her activities as trustee, for
13:37:07 2 her general activities as trustee. That is a
13:37:10 3 requirement that is in the trust document.

13:37:51 4 Q. And your testimony is that you're not able to
13:37:20 5 testify about any effort made to determine whether
13:37:25 6 the trust had claims against Dalia Genger because
13:37:30 7 that's privileged? Is that right?

13:37:36 8 MR. POLLOCK: I believe that question
13:37:38 9 was asked and answered already, and that is
13:37:40 10 that -- and you're right, that is exactly
13:37:42 11 how he answered it. And I would ask you to
13:37:45 12 stop calling for privileged testimony.

13:37:47 13 MR. BOWEN: I'm not calling for
13:37:48 14 privileged testimony. I'm asking the
13:37:49 15 witness. Maybe, maybe you misunderstood,
13:37:51 16 Mr. Pollock.

13:37:53 17 The question is, and I'm just trying
13:37:56 18 to clarify the witness's position, is that
13:37:58 19 he is refusing to answer the question about
13:38:00 20 any effort made to investigate whether or
13:38:02 21 not the trust has or had claims against
13:38:06 22 Dalia Genger as the, as the prior trustee
13:38:09 23 because it's privileged. Is that your
13:38:12 24 position?

13:38:18 25 MR. POLLOCK: Yes. I am directing him

13:38:20 1 not to answer that question.

13:38:21 2 THE WITNESS: Yes. At the advice of
13:38:22 3 counsel, I'm not answering that.

13:38:24 4 BY MR. BOWEN:

13:38:25 5 Q. Is there anything that you can tell us about
13:38:27 6 that topic that's outside of the privilege, to your
13:38:29 7 understanding?

13:38:30 8 A. No.

13:44:41 9 Q. So what I'm asking you is what did you
13:38:34 10 understand was done that's not based on privileged
13:38:39 11 communication from lawyers to investigate whether the
13:38:44 12 trust has or had a claim against Dalia Genger?

13:38:52 13 A. Everything in that would be privileged.

13:45:13 14 MR. HERSCHMANN: Mike, it's Eric
13:38:58 15 Herschmann. Can we take, like, a
13:39:00 16 three-minute break, please?

13:39:02 17 THE WITNESS: Of course.

13:39:05 18 MR. BOWEN: Yeah, we can take a break
13:39:07 19 right now. I'm about to move topics. So
13:39:07 20 let's do -- it's 2:40, 1:40 your time --
13:39:09 21 let's do 1:45, please.

13:39:12 22 (Five-minute break.)

13:44:41 23 BY MR. BOWEN:

13:44:47 24 Q. Okay. So when you gave the release to Dalia
13:44:50 25 Genger, it was at the same day that you signed

13:44:55 1 accepting the position as the successor trustee;

13:44:58 2 correct?

13:45:51 3 A. I did.

13:45:52 4 Q. So any investigation you did about potential
13:45:04 5 claims against Dalia Genger you did before you became
13:45:12 6 the trustee?

13:45:14 7 MR. POLLOCK: Same objection.

13:45:15 8 Q. Is that correct?

13:46:03 9 A. I have been through a lot of material. I,
13:45:26 10 obviously, did not come up with claims against Dalia
13:45:32 11 Genger. I came up with, with other claims, so.

13:45:43 12 Q. But you did that before you accepted the
13:45:46 13 position as successor trustee; is that what you're
13:45:49 14 saying?

13:46:19 15 A. I am saying I did not.

13:45:51 16 Q. You did it after you became successor trustee?

13:45:55 17 A. I'm saying no one has indicated to me at any
13:45:59 18 point that Dalia Genger has done anything that I need
13:46:03 19 to investigate. If I were to find out that she had,
13:46:08 20 then I would take the resources and investigate that.

13:46:43 21 Q. So you didn't conduct any investigation before
13:46:14 22 you signed the release releasing Dalia Genger --

13:46:17 23 MR. POLLOCK: Objection.

13:46:17 24 Q. -- is that true?

13:46:19 25 MR. POLLOCK: Objection,

13:46:20 1 mischaracterizes the testimony. Also, Mr.
13:46:22 2 Bowen, I believe you represent Kasowitz in
13:46:27 3 this proceeding. Are you questioning him
13:46:30 4 as counsel for Kasowitz?

13:46:30 5 Q. Mr. Oldner --

13:46:30 6 MR. POLLOCK: Is that right?

13:46:35 7 Q. -- you can answer the question, please.

13:46:37 8 MR. POLLOCK: Let's go back to the
13:46:38 9 very beginning. When you introduced
13:46:39 10 yourself, you didn't indicate who you were
13:46:41 11 representing.

13:46:43 12 MR. BOWEN: Okay. You can have one.

13:46:43 13 MR. POLLOCK: Please indicate who you
13:46:44 14 represent.

13:46:45 15 BY MR. BOWEN:

13:47:20 16 Q. Go head, Mr. Oldner. You can answer the
13:46:52 17 question.

13:46:53 18 A. Surprise, but would you ask the question again?

13:46:57 19 Q. Oh, I'm sorry. Yes. You -- I'm trying to get
13:47:00 20 clarity on what your testimony is, and I think what
13:47:03 21 you're saying is you did not conduct any kind of
13:47:06 22 investigation of Dalia Genger before you signed the
13:47:10 23 release as the successor trustee releasing any claims
13:47:14 24 against her --

13:47:15 25 MR. POLLOCK: Objection --

13:47:15 1 Q. -- is that correct?

13:47:16 2 MR. DELLAPORTAS: Object to form.

13:47:16 3 MR. POLLOCK: -- mischaracterizes the
13:47:18 4 testimony. Also if, if you are, indeed,
13:47:21 5 representing Kasowitz here, I don't begin
13:47:25 6 to understand why Kasowitz as a creditor in
13:47:29 7 the Orly Genger bankruptcy is seeking
13:47:33 8 discovery on Mr. Oldner's -- Mr. Cavaliere,
13:47:36 9 I'm not sure what you're signaling to me.

13:47:41 10 MR. CAVALIERE: Mr. Pollock, I think
13:47:43 11 it's very -- it's, it's black letter law a
13:47:43 12 creditor has a right to ask questions of a
13:47:46 13 deponent in a bankruptcy case. I think we
13:47:48 14 can move on.

13:47:49 15 MR. DELLAPORTAS: I don't think that
13:47:49 16 was his point.

13:47:51 17 MR. POLLOCK: That was not my point.
13:47:55 18 My point was that there is an entity of,
13:47:55 19 of, that is connected to Kasowitz in that
13:48:00 20 it is a -- I think you said, Mr. Cavaliere,
13:48:03 21 at the previous status conference that it's
13:48:07 22 directed by Mr. Herschmann or otherwise
13:48:08 23 tied to Mr. Herschmann -- I can't remember
13:48:12 24 your exact words -- but it appears that Mr.
13:48:14 25 Bowen is seeking discovery in support of

13:48:17 1 the entity Claims Pursue.

13:48:19 2 And, on top of that, he won't -- he
13:48:20 3 has not even identified who he is
13:48:23 4 representing in this questioning, and it
13:48:25 5 appears that, in effect, he is representing
13:48:28 6 the interest of the Claims Pursue entity.

13:48:32 7 And I've asked him to clarify who he
13:48:34 8 is representing in this proceeding during
13:48:37 9 the deposition, during which he is asking
13:48:38 10 the questions.

13:48:39 11 BY MR. BOWEN:

13:49:09 12 Q. Go ahead, Mr. Oldner. Let me, I think for the
13:48:45 13 third time I'll restate the question. And, again,
13:48:48 14 I'm just asking you to clarify. If I misstate it,
13:48:52 15 just correct it.

13:48:54 16 MR. POLLOCK: Mr. Bowen --

13:48:55 17 Q. I understood you to say that you did not
13:48:57 18 conduct any investigation of Dalia Genger before you
13:49:01 19 signed a release as the successor trustee releasing
13:49:04 20 any claims the trust may or may not have against
13:49:07 21 Dalia Genger; is that correct?

13:49:09 22 MR. POLLOCK: Objection;
13:49:09 23 mischaracterizes his testimony.

13:49:11 24 Q. You can answer it. Am I right or wrong?

13:49:20 25 A. I did not conduct any investigation into Dalia

13:49:24 1 Genger before I signed the release.

13:49:30 2 Q. Now the 8.9 or 9 million dollar debt that the
13:49:34 3 trust has, you, you understand that's connected to
13:49:37 4 something called the D&K note; correct?

13:49:41 5 A. Yes, sir.

13:49:48 6 Q. And do you, do you know that Dalia -- well, let
13:49:49 7 me ask it this way. At the time that you decided to
13:49:51 8 be the successor trustee were you aware of the fact
13:49:56 9 that Dalia Genger had purported to transfer that note
13:50:00 10 and, and incur debt on behalf of the trust that was
13:50:04 11 disallowed by the Court?

13:50:10 12 MR. DELLAPORTAS: Object to form. It
13:50:11 13 misstates the record.

13:50:13 14 MR. POLLOCK: I join in that
13:50:14 15 objection.

13:50:17 16 MR. DELLAPORTAS: It's just not true.

13:50:18 17 A. Could you, could you point me to what you're
13:50:20 18 talking about?

13:50:52 19 Q. Well, were you aware that there was any
13:50:23 20 transaction involving the D&K note that Dalia Genger
13:50:28 21 was involved in?

13:50:29 22 A. Not at all.

13:50:31 23 Q. You have no knowledge of that at all?

13:50:33 24 A. I had no knowledge whenever I accepted the
13:50:36 25 position.

13:51:08 1 Q. Okay. And did, did you have any knowledge at
13:50:39 2 any time either before you accepted the position or
13:50:42 3 afterwards that the transactions had been disallowed
13:50:49 4 by the Court that purported to put debt on the trust?

13:50:55 5 MR. DELLAPORTAS: Objection; misstates
13:50:56 6 the record. It's simply untrue.

13:51:00 7 MR. POLLOCK: And I join in that
13:51:02 8 objection. And, also, I am concerned that
13:51:03 9 again what you are asking for is his legal
13:51:05 10 analysis of the legal record, which is
13:51:08 11 inherently privileged. And, also --

13:51:11 12 Q. You can answer.

13:51:12 13 MR. POLLOCK: -- this has nothing to
13:51:14 14 do with the Motion to Dismiss.

13:51:15 15 Q. You can answer. Subject to all of those
13:51:17 16 objections, just -- and I'll restate the question.

13:51:18 17 A. Subject to those objections, are you speaking
13:51:21 18 of some particular decision?

13:51:25 19 Q. Yes.

13:51:25 20 A. Okay.

13:51:26 21 Q. That there was a decision that disallowed a
13:51:29 22 debt, a liability that, that Dalia Genger had tried
13:51:33 23 to take on, onto the Orly Genger Trust.

13:51:37 24 MR. POLLOCK: Mr. Bowen --

13:51:38 25 Q. Are you aware of any decision like that, where

13:51:39 1 that was disallowed?

13:51:39 2 A. I wouldn't --

13:51:41 3 MR. POLLOCK: Instead of
13:51:42 4 characterizing the decision, can you show
13:51:44 5 it to us, or otherwise -- I don't even know
13:51:47 6 why you are asking the witness to
13:51:49 7 characterize or testify to a court decision
13:51:51 8 without -- anything he knows about it is
13:51:57 9 his legal analysis with counsel. Enough.
13:52:00 10 Move on.

13:52:00 11 MR. DELLAPORTAS: This is John
13:52:00 12 Dellaportas --

13:52:03 13 MR. BOWEN: That's blatant coaching,
13:52:03 14 which you've done repeatedly today, and I
13:52:05 15 would ask you again please to not do that.
13:52:07 16 It's against the rules.

13:52:12 17 MR. DELLAPORTAS: Sorry. This is John
13:52:12 18 Dellaportas.

13:52:12 19 BY MR. BOWEN:

13:52:12 20 Q. Mr. Oldner --

13:52:12 21 MR. DELLAPORTAS: Objection -- please
13:52:12 22 don't speak over my objections.

13:52:13 23 MR. BOWEN: Mr. Dellaportas, I didn't
13:52:15 24 realize you were talking, because I was
13:52:16 25 responding to Mr. Pollock.

13:52:19 1 I don't know if my, my conduct is
13:52:21 2 heard by the reporter. Can you cease and
13:52:24 3 desist for a moment? I'll let you speak.

13:52:26 4 MR. DELLAPORTAS: Okay.

13:52:26 5 MR. BOWEN: Please stop. Janess, did
13:52:26 6 you hear what I said or no?

13:52:41 7 COURT REPORTER: In and out. I could
13:52:41 8 hear Mr. Dellaportas breaking into your --
13:52:41 9 every time you paused, I could hear what he
13:52:41 10 was saying.

13:52:42 11 MR. BOWEN: Okay. Okay. Mr.
13:52:42 12 Dellaportas, we've all been acknowledging
13:52:44 13 and respecting the limitations of this
13:52:46 14 medium and taking turns in speaking.

13:52:49 15 So you can't just immediately start
13:52:51 16 speaking whenever you feel like it.
13:52:53 17 Mr. Pollock had made some statements, and I
13:52:56 18 am responding to it.

13:52:57 19 If you want a chance now to state
13:52:58 20 whatever objection you have, you may do so.

13:52:58 21 MR. DELLAPORTAS: Thank you. Much
13:52:58 22 appreciated. I would just ask that if we
13:53:04 23 are referring the witness to a decision, we
13:53:07 24 show that decision, because the last few
13:53:09 25 questions which purport to describe

13:53:13 1 decisions bear no relation to the actual
13:53:17 2 contents of those decisions, and really
13:53:19 3 it's counterproductive.

13:53:21 4 So, again, these decisions are public
13:53:23 5 record. The witness, we can ask if he's
13:53:26 6 seen them, if he has views on them.

13:53:28 7 That's all, I guess, that seems
13:53:29 8 relevant, so it's fair game, but, but for
13:53:33 9 you to characterize decisions is just going
13:53:36 10 to have lots of speaking objections and
13:53:37 11 waste everybody's time, so please, please
13:53:37 12 don't do that.

13:53:37 13 BY MR. BOWEN:

13:53:39 14 Q. Mr. Oldner, are you aware of any court
13:53:43 15 decisions involving the D&K note?

13:53:50 16 A. Not that I can recall. I recall things about
13:53:53 17 the D&K note. That's all.

13:54:26 18 Q. You do recall some things about the D&K note?

13:54:00 19 A. I recall the D&K note for sure.

13:54:03 20 Q. And what was your understanding about what the
13:54:05 21 D&K note -- and that's D, ampersand sign, K, D&K
13:54:09 22 note, what was your understanding about what that
13:54:13 23 was?

13:54:13 24 A. My understanding is that was the note that
13:54:16 25 originally funded the trust, that purchased the

13:54:22 1 shares to fund the trust. I can be wrong about that,
13:54:25 2 but that's my understanding.

13:55:02 3 Q. And did you, did you learn about somebody by
13:54:31 4 the name of David Parnes in connection with that?

13:54:35 5 A. Not in connection with that.

13:54:37 6 Q. Do you know who David Parnes is?

13:54:38 7 A. I do.

13:55:12 8 Q. Have you meet him?

13:54:45 9 A. I have.

13:55:14 10 Q. Where, where did you meet him?

13:55:14 11 A. Austin, Texas.

13:54:48 12 Q. And was that in August of 2019?

13:55:20 13 A. It was.

13:54:51 14 Q. What did you discuss with Mr. Parnes?

13:54:54 15 MR. POLLOCK: I would caution the
13:54:55 16 witness that communications with David
13:55:00 17 Parnes would be subject to the common
13:55:02 18 interest privilege, and direct him not to
13:55:04 19 give answers with respect to what he
13:55:06 20 discussed with Mr. Parnes.

13:55:09 21 MR. DELLAPORTAS: Same -- this is Mr.
13:55:10 22 Dellaportas, same instruction. I'm
13:55:12 23 instructing the witness not to answer any
13:55:15 24 questions about communications with
13:55:16 25 Mr. Parnes, period.

13:55:17 1 BY MR. BOWEN:

13:56:15 2 Q. Who else was present when you had this, when
13:55:22 3 you met with Mr. Parnes?

13:55:27 4 A. Mr. Parnes was in the room full of lawyers
13:55:35 5 being interviewed and operating concerning the
13:55:38 6 bankruptcy in Texas.

13:55:40 7 Q. Who was there, what lawyers?

13:55:44 8 A. Well, Mr. Dellaportas, Sabrina, whose last name
13:55:55 9 I don't know. Sagi was there. Jay Ong was there.
13:56:06 10 David Parnes was there, and it seems like there's one
13:56:10 11 other person that I may be missing.

13:56:15 12 Q. Did you --

13:56:15 13 A. But those people were there.

13:56:54 14 Q. Okay. And this was in person; right?

13:56:21 15 A. Pardon me, sir?

13:56:22 16 Q. This was in person in Austin?

13:56:26 17 A. Yes, it was in person.

13:56:27 18 Q. Had you talked to Mr. Parnes before that?

13:56:30 19 A. That's the first day I met him.

13:56:32 20 Q. Okay. And then have you talked with him since
13:56:35 21 that day?

13:56:36 22 A. Only one email exchange.

13:56:43 23 Q. And is that email exchange subject to the
13:56:46 24 common interest privilege?

13:56:48 25 MR. POLLOCK: Mr. Bowen, I would, on

13:56:54 1 behalf of the witness, indicate that
13:56:56 2 communications, privileged communications
13:56:58 3 with Mr. Parnes are subject to the common
13:57:01 4 interest privilege.

13:57:03 5 Q. Well, I'm asking if the email exchange was a
13:57:06 6 privileged communication.

13:57:07 7 A. I'm sure it was.

13:57:41 8 Q. But he's not your lawyer; correct?

13:57:43 9 A. He is not my lawyer.

13:57:15 10 Q. And he doesn't represent the trust or Recovery
13:57:17 11 Effort; correct?

13:57:49 12 A. He does not.

13:57:20 13 Q. Do you know who he represents?

13:57:23 14 A. I do not. I want to say -- I would be
13:57:30 15 guessing.

13:57:31 16 Q. If you don't --

13:57:31 17 A. I would be guessing. I don't know.

13:58:00 18 Q. Well, if you don't know who he represents, then
13:57:37 19 what's the, how do you define the common, what topics
13:57:41 20 are in common, that would be within the common
13:57:43 21 interest?

13:57:44 22 MR. POLLOCK: Objection; seeks a legal
13:57:45 23 conclusion. We're not doing discovery on
13:57:48 24 his understanding of a legal concept.

13:57:51 25 Clearly, he already testified as to

13:57:53 1 who the parties were and who the lawyers
13:57:55 2 were in the room.

13:57:56 3 And we are asserting the common
13:57:58 4 interest privilege with respect to those
13:58:01 5 communications.

13:58:05 6 MR. DELLAPORTAS: This is Mr.
13:58:05 7 Dellaportas. Same objection --

13:58:12 8 Q. So --

13:58:12 9 MR. DELLAPORTAS: -- and same
13:58:12 10 instruction.

13:58:14 11 Q. Mr. Oldner, are you following Mr. Dellaportas's
13:58:14 12 instruction not to answer these questions about Mr.
13:58:14 13 Parnes?

13:58:16 14 MR. POLLOCK: No. Presumably he'd be
13:58:18 15 following my instruction.

13:58:19 16 MR. BOWEN: Well, Mr. Dellaportas
13:58:20 17 instructed him.

13:58:21 18 BY MR. BOWEN:

13:58:21 19 Q. I'm asking you, Mr. Oldner, are you following
13:58:23 20 Mr. Dellaportas's instruction?

13:58:25 21 A. Mr. Dellaportas is not my attorney. I am not
13:58:27 22 following his instruction. I am following Adam
13:58:30 23 Pollock's instruction, and I am not answering this
13:58:34 24 question on his instruction.

13:58:36 25 Q. And, and you understand that the instruction by

13:58:38 1 Mr. Dellaportas and Mr. Pollock are the same?

13:58:41 2 A. No. I understand that instruction by Adam

13:58:44 3 Pollock is instruction from my attorney. Instruction

13:58:47 4 from John Dellaportas is not instruction from my

13:58:51 5 attorney.

13:59:20 6 Q. Did you discuss the D&K note with Mr. Parnes?

13:58:56 7 MR. POLLOCK: Objection. I'm going to

13:58:58 8 direct the witness not to answer questions

13:58:59 9 about what he discussed with the legal

13:59:00 10 counsel.

13:59:03 11 Q. You can just say "yes" or "no."

13:59:06 12 MR. POLLOCK: No, he can't say "yes"

13:59:07 13 or "no." "Yes" or "no" would convey the

13:59:09 14 privileged communication, and I would ask

13:59:11 15 for the umpteenth time that you stop

13:59:14 16 directly asking him for legal

13:59:15 17 communications. I find it completely

13:59:19 18 inappropriate.

13:59:24 19 MR. DELLAPORTAS: Same objection from

13:59:25 20 Dellaportas.

13:59:26 21 Q. Are you following Mr. Dellaportas's and

13:59:28 22 Mr. Pollock's --

13:59:28 23 A. I am following --

13:59:28 24 Q. -- instructions?

14:00:15 25 A. I am following Mr. Pollock's instruction not to

13:59:33 1 answer the question.

13:59:44 2 Q. How did you learn about the D&K note?

14:00:26 3 A. Through reading voluminous materials.

13:59:52 4 Q. What's your understanding from that reading
13:59:56 5 about how the D&K note was used to fund the Orly
13:59:59 6 Genger Trust?

14:00:36 7 A. My understanding, which is limited and not a
14:00:07 8 legal understanding, is that the money used from the
14:00:11 9 D&K note purchased the shares that went into each one
14:00:17 10 of the two trusts, the Sagi trust and the Orly trust,
14:00:21 11 and that that money, that note had to be paid back,
14:00:24 12 because if the note wasn't paid back, then the trust
14:00:28 13 would be considered a sham trust and would be
14:00:32 14 illegal, an illegal tax maneuver.

14:00:36 15 So from that I understand that -- once
14:00:39 16 again, it is simply my understanding. This is not my
14:00:42 17 legal interpretation -- that the D&K note must be
14:00:46 18 repaid.

14:00:47 19 And from a decision I read that I cannot
14:00:50 20 tell you when it was, but I believe it was Justice
14:00:54 21 Jeff, he declared that the D&K note was owed 50
14:01:00 22 percent -- the balance of the D&K note had to be paid
14:01:04 23 off by each trust 50 percent -- 50 percent by the
14:01:07 24 Sagi trust, 50 percent by the Orly trust. That is
14:01:11 25 99 percent of my understanding of the D&K note.

14:01:19 1 Q. What was your understanding about what assets
14:01:21 2 the trust had to pay back the note?

14:01:25 3 A. They were the shares that were purchased by
14:01:28 4 that note --

14:01:28 5 Q. What shares --

14:01:28 6 A. -- the value of the shares.

14:01:30 7 Q. What shares?

14:01:31 8 A. I believe those are the TPR shares. I think
14:01:35 9 that's right.

14:01:36 10 Q. So the TPR shares --

14:01:36 11 A. TPR, which is -- the letters get confusing.
14:01:39 12 It's one of the two.

14:01:42 13 Q. The TPR shares would generate a dividend
14:01:46 14 through the trust as the shareholder, and then the
14:01:49 15 trust would use that money to pay back the note?

14:01:52 16 A. Originally I believe that Arie Genger made
14:01:56 17 payments on that note.

14:01:59 18 Q. But what was your understanding of how the
14:02:01 19 trust would have the ability to pay off the note?

14:02:34 20 A. Well, if the trust had the value of the shares,
14:02:08 21 the trust could either share, sell the shares --
14:02:11 22 there are multiple ways -- use the income from the
14:02:14 23 shares, or sell off a portion of the shares to pay
14:02:17 24 the note.

14:02:17 25 Q. Was it your understanding that the trust was

14:02:19 1 using the income from the shares to repay the note?

14:02:24 2 A. That they would use that solely, the income --

14:02:26 3 okay, income from one form or another, from either

14:02:29 4 sales or dividends?

14:02:33 5 Q. Yes.

14:02:34 6 A. That's what you mean? Yes. They would use the

14:02:37 7 income from that to pay off the notes.

14:02:39 8 Q. Did you have the understanding that all of that

14:02:41 9 income was supposed to come from dividends?

14:02:44 10 A. No, I did not.

14:03:26 11 Q. If the trust just sold the shares and paid off

14:02:51 12 the note, what assets would the trust have left?

14:02:55 13 A. Well, the trust would not have to sell all of

14:02:56 14 the shares to pay off the note.

14:02:59 15 Q. That's your understanding?

14:03:01 16 A. It is.

14:03:03 17 Q. And how come the, the repayment of that D&K

14:03:07 18 note stopped, by the trust?

14:03:14 19 MR. DELLAPORTAS: Objection; lack of
14:03:15 20 foundation.

14:04:05 21 A. I don't know of any way.

14:04:06 22 Q. Do you know if any repayment was ever made on
14:03:22 23 the D&K note?

14:04:10 24 A. Yes.

14:04:10 25 Q. How much was repaid?

14:04:16 1 A. I do not know.

14:03:29 2 Q. What, what's your basis for knowing that some
14:03:31 3 amount was repaid?

14:04:25 4 A. I reconstructed a spreadsheet to determine the
14:03:52 5 value of the D&K note.

14:03:55 6 Q. And where did you get the information for that
14:03:57 7 spreadsheet?

14:03:59 8 MR. POLLOCK: Mr. Oldner, I'll caution
14:04:01 9 you not to testify to matters undertaken in
14:04:06 10 anticipation of litigation or
14:04:08 11 communications that you had with your legal
14:04:10 12 counsel.

14:04:14 13 A. Based on that, I, I cannot answer that
14:04:17 14 question.

14:04:57 15 Q. You're refusing to answer that question?

14:04:24 16 A. I cannot answer that question, based on the
14:04:26 17 fact that the information would be privileged.

14:05:06 18 Q. So you're refusing based on privilege?

14:05:10 19 A. I will not answer the question based on
14:04:35 20 privilege.

14:05:13 21 Q. The person who holds the D&K note now is Robin
14:04:42 22 Rodriguez; right?

14:04:44 23 A. I believe that that's the claim, that MSM holds
14:04:52 24 the rights to the D&K note.

14:04:55 25 Q. Who does?

14:04:55 1 A. I believe that that is the claim now, that
14:04:59 2 Manhattan Safety Maine holds the rights to the D&K
14:05:03 3 note, yes.

14:05:04 4 Q. And Manhattan Safety Maine is Robin Rodriguez;
14:05:07 5 no?

14:05:09 6 A. Yes.

14:05:09 7 Q. Did you --

14:05:09 8 MR. POLLOCK: Mr. Bowen, you are
14:05:12 9 squarely seeking discovery with respect to
14:05:12 10 the MSM action, and transparently so.

14:05:18 11 I would respectfully ask that you
14:05:18 12 either move along or make a proffer as to
14:05:21 13 how discovery with respect to the MSM
14:05:23 14 action possibly relates to the Motion to
14:05:27 15 Dismiss.

14:05:29 16 Q. Have you and Robin Rodriguez done a
14:05:33 17 reconciliation to figure out from the trust, from the
14:05:36 18 trust's perspective how much money the trust owes on
14:05:39 19 the note?

14:05:40 20 A. Robin, Robin Rodriguez and I have not.

14:06:31 21 Q. Now you, on behalf of the trust, originally
14:05:58 22 joined in the Motion to Dismiss this bankruptcy;
14:05:59 23 correct?

14:06:01 24 A. That is correct.

14:06:09 25 Q. That was when the motion was made in Austin,

14:06:12 1 Texas bankruptcy court; correct?

14:06:49 2 A. That is correct.

14:06:50 3 Q. After the case was transferred to the Southern
14:06:22 4 District of New York, Sagi Genger made a, he filed
14:06:27 5 what he called an Amended Motion to Dismiss. Are you
14:06:30 6 aware of that?

14:06:30 7 A. I am.

14:06:32 8 Q. Does the trust join in the Amended Motion to
14:06:36 9 Dismiss?

14:06:36 10 A. The trust has not joined in that motion.

14:06:39 11 Q. Why not?

14:06:40 12 MR. POLLOCK: Mr. Bowen, again, I
14:06:42 13 caution the witness not to testify about
14:06:46 14 privileged communications, and I
14:06:48 15 respectfully ask you to stop trying to
14:06:51 16 elicit legal analysis from the witness.

14:06:57 17 Q. Why not, Mr. Oldner? To your understanding,
14:07:02 18 why did you not join in the Motion to Dismiss? What
14:07:06 19 changed between Austin, Texas and the Southern
14:07:06 20 District of New York?

14:07:09 21 A. Discussion with counsel, I chose not to.

14:07:13 22 Q. Well, leaving your discussion with counsel
14:07:16 23 aside, to your understanding, why not?

14:07:46 24 A. Leaving my discussion with counsel aside,
14:07:20 25 there's nothing else to say.

14:07:23 1 Q. Well, I'm not asking for what they said or what
14:07:26 2 you said to them. I'm just asking for you, because
14:07:29 3 you're -- well, let me, let me start this way.

14:07:31 4 A. Okay.

14:07:32 5 Q. You understand that you're responsible for the
14:07:34 6 trust; right?

14:07:35 7 A. I do.

14:08:08 8 Q. You understand that you have fiduciary duties
14:07:42 9 to the beneficiary of the trust; correct?

14:07:44 10 MR. POLLOCK: Objection, it seeks a
14:07:45 11 legal conclusion.

14:08:18 12 Q. You can answer, sir.

14:07:52 13 A. I understand I have an obligation to the
14:07:55 14 beneficiaries of the trust, yes.

14:07:58 15 Q. And you understand that's a fiduciary duty;
14:07:59 16 right?

14:08:29 17 A. Yes.

14:08:02 18 MR. POLLOCK: Objection; seeks a legal
14:08:04 19 conclusion. And, also --

14:08:04 20 Q. And you understand --

14:08:04 21 MR. POLLOCK: -- Mr. Bowen, why are
14:08:06 22 you asking him --

14:08:07 23 Q. You understand --

14:08:07 24 MR. POLLOCK: -- for his legal
14:08:08 25 analysis --

14:08:09 1 Q. You understand that --

14:08:09 2 MR. POLLOCK: -- of his duties?

14:08:10 3 Q. I don't know who's speaking, but, Mr. Oldner,
14:08:13 4 do you understand that part of the fiduciary duty
14:08:16 5 that you owe to the beneficiary of the trust is the
14:08:20 6 duty of undivided loyalty; right?

14:08:23 7 MR. POLLOCK: Objection. Mr. Bowen, I
14:08:25 8 asked, I am asking --

14:08:26 9 MR. BOWEN: Who is speaking? I can't
14:08:27 10 recognize your voice.

14:08:29 11 MR. POLLOCK: This is Adam Pollock. I
14:08:29 12 asked politely repeatedly for you to stop
14:08:33 13 asking him for his legal analysis, and I'd
14:08:35 14 also ask you for exactly what came up in
14:08:38 15 the conference with, with Garrity.

14:08:43 16 Garrity said we are not doing
14:08:44 17 discovery at this time on the pending
14:08:47 18 claims. He said he does not see how an
14:08:50 19 analysis of those claims is relevant to the
14:08:53 20 Motion to Dismiss.

14:08:54 21 He said that those are not factors
14:08:56 22 that he would consider, and he
14:08:56 23 limited all --

14:08:57 24 MR. BOWEN: Are you referring to
14:08:58 25 Judge, are you referring to Judge Garrity?

14:09:00 1 MR. POLLOCK: Yeah. What did I say?

14:09:01 2 MR. BOWEN: You said "Garrity." I

14:09:02 3 assumed you meant --

14:09:04 4 MR. POLLOCK: Right. I apologize.

14:09:05 5 MR. BOWEN: -- Judge Garrity.

14:09:09 6 MR. POLLOCK: Judge Garrity. And now
14:09:10 7 you are harassing the witness by asking him
14:09:14 8 to make a legal analysis of fiduciary
14:09:15 9 duties.

14:09:19 10 It is so far out of line, and if you
14:09:21 11 continue this harassment, we will have to
14:09:24 12 stop the deposition.

14:09:27 13 MR. BOWEN: Well, I'll ask you to stop
14:09:29 14 coaching the witness, because, again, it's
14:09:30 15 a blatant violation of the rules.

14:09:33 16 BY MR. BOWEN:

14:09:33 17 Q. But, Mr. Oldner, I don't know if you answered
14:09:36 18 this question, because of the objection, but I'll ask
14:09:39 19 it again.

14:09:39 20 You understand in your capacity as the
14:09:43 21 trustee for the Orly Genger Trust that the fiduciary
14:09:46 22 duties that you owe to the beneficiary of the trust
14:09:50 23 include the duty of undivided, undivided loyalty.

14:09:55 24 MR. POLLOCK: Objection.

14:09:55 25 Q. Do you understand that?

14:09:56 1 MR. POLLOCK: Objection. That
14:09:57 2 question is just harassing and unnecessary.
14:10:00 3 It -- whether you want him to agree with
14:10:03 4 your interpretation of the law, why are you
14:10:06 5 asking the, the witness this?

14:10:08 6 Why don't you ask the judge what the
14:10:10 7 correct interpretation of the law is, and
14:10:11 8 not the witness? Move along, Mr. Bowen.

14:10:15 9 Q. Go ahead, Mr. Oldner. You can answer the
14:10:16 10 question, and I'll state it a third time. Do you
14:10:20 11 understand that the duty of undivided loyalty is part
14:10:24 12 of your fiduciary duties to the beneficiary of the
14:10:26 13 trust?

14:10:26 14 MR. DELLAPORTAS: This is John
14:10:26 15 Dellaportas.

14:10:27 16 MR. POLLOCK: And I will object to the
14:10:27 17 form.

14:10:27 18 MR. DELLAPORTAS: Sorry. This is John
14:10:27 19 Dellaportas. I object. It just flatly
14:10:33 20 misstates New York law, and New York
14:10:35 21 lawyers should not misstate New York law.

14:10:38 22 MR. POLLOCK: John, I'm having trouble
14:10:39 23 hearing you.

14:10:40 24 Q. Go ahead, Mr. Oldner, you can, you can answer
14:10:41 25 the question.

14:10:41 1 MR. POLLOCK: Mr. Bowen, just one
14:10:41 2 second for the stenographer. John
14:10:44 3 Dellaportas, what did you say?

14:10:48 4 MR. DELLAPORTAS: I object to the
14:10:49 5 question, that it flatly misstates New York
14:10:54 6 law, and New York lawyers should not
14:10:55 7 misstate New York law to non-lawyer fact
14:10:56 8 witnesses. It's just improper.

14:11:02 9 MR. BOWEN: Mr. Dellaportas, you have
14:11:02 10 to state your name before you start
14:11:04 11 speaking. We've all been following that
14:11:05 12 convention except me, but --

14:11:06 13 COURT REPORTER: I'm having --

14:11:06 14 BY MR. BOWEN:

14:11:06 15 Q. So, Mr. Oldner, is that, is that your
14:11:10 16 understanding, that you have an undivided duty of
14:11:10 17 loyalty, or no?

14:11:11 18 MR. POLLOCK: Hold on one second. Mr.
14:11:15 19 Dellaportas, can you please speak up,
14:11:16 20 because the stenographer is having a lot of
14:11:16 21 trouble hearing you?

14:11:17 22 COURT REPORTER: Thank you. That's
14:11:17 23 what I was going to say. You've got to
14:11:17 24 speak up, because I'm really having a hard
14:11:17 25 time.

14:11:30 1 MR. DELLAPORTAS: Sure. If you got my
14:11:30 2 last objection, I won't repeat it, and I'll
14:11:30 3 just speak up going forward. If you didn't
14:11:30 4 get --

14:11:30 5 MR. POLLOCK: I don't think that she
14:11:31 6 did. I think you can speak up and repeat
14:11:32 7 it.

14:11:35 8 MR. DELLAPORTAS: Okay. Sorry. This
14:11:36 9 is John Dellaportas. I object to the last
14:11:39 10 question, in that it misstates New York
14:11:42 11 law, and New York lawyers should not
14:11:45 12 misstate New York law to non New York
14:11:47 13 lawyers. It's improper.

14:11:50 14 I would ask Mr. Bowen not to make
14:11:52 15 recitations of New York law, particularly
14:11:52 16 incorrect ones, going forward to the
14:11:54 17 witness. It's counterproductive.

14:11:55 18 MR. POLLOCK: Mr. Bowen, this is
14:11:56 19 entirely counterproductive. Can you please
14:12:00 20 move on?

14:12:00 21 BY MR. BOWEN:

14:12:26 22 Q. Mr. Oldner, the question is do you understand
14:12:03 23 that you have an undivided duty of loyalty to the
14:12:06 24 beneficiary of the trust?

14:12:07 25 MR. POLLOCK: Mr. --

14:12:08 1 MR. DELLAPORTAS: Same objection.

14:12:11 2 MR. POLLOCK: Same objection.

14:12:11 3 Mr. Oldner, you don't need to --

14:12:14 4 MR. BOWEN: I didn't, I didn't hear
14:12:14 5 the answer from the witness.

14:12:16 6 BY MR. BOWEN:

14:12:16 7 Q. Can you repeat your answer?

14:12:17 8 MR. POLLOCK: I'm telling him that,
14:12:17 9 Mr. Oldner, you don't need to ask, answer
14:12:20 10 that question. It's just harassing. Mr.
14:12:22 11 Bowen can move on.

14:12:25 12 A. On advice of counsel, I will not answer that
14:12:27 13 question.

14:12:27 14 Q. You're refusing to answer that question?

14:12:30 15 A. On advice of counsel, I will not answer that
14:12:32 16 question.

14:12:33 17 Q. You're refusing to answer the question of what
14:12:35 18 your understanding is of your legal obligations to
14:12:37 19 the beneficiary of the trust, that you claim to be --

14:12:40 20 MR. POLLOCK: Now you're asking a
14:12:41 21 different question, Mr. Bowen.

14:12:43 22 MR. BOWEN: Excuse me. You can't
14:12:44 23 speak over with an objection. It's one
14:12:47 24 thing to, to interrupt and obstruct the
14:12:49 25 deposition at the end of a question. It's

14:12:51 1 another to do it in the middle of a
14:12:53 2 question.

14:12:54 3 BY MR. BOWEN:

14:12:54 4 Q. Mr. Oldner, leaving aside whatever
14:12:58 5 characterization your lawyer is trying to put on my
14:13:01 6 question, my question to you is you're refusing to
14:13:03 7 answer a question about what legal obligations you
14:13:07 8 have, to your understanding, in your position as the
14:13:10 9 trustee for the Orly Genger Trust; is that correct?

14:13:16 10 MR. DELLAPORTAS: Objection; misstates
14:13:17 11 the prior question. This is Dellaportas.

14:13:20 12 MR. POLLOCK: I join in that
14:13:21 13 objection, that it misstates the prior
14:13:22 14 question, and I would ask you to stop --

14:13:25 15 MR. BOWEN: I'm not trying to restate
14:13:26 16 a question. I just said that.

14:13:28 17 BY MR. BOWEN:

14:13:28 18 Q. Mr. Oldner, can you answer that question?

14:13:28 19 MR. DELLAPORTAS: Yes, you are. You
14:13:28 20 said, you said he's refusing to answer a
14:13:31 21 question which you did not ask, Mr. Bowen.
14:13:33 22 That's improper. Please do not do that.
14:13:36 23 It just slows down the deposition.

14:13:37 24 MR. BOWEN: Mr. Dellaportas, please
14:13:39 25 don't raise your voice. You have to

14:13:41 1 identify who is speaking, and you are
14:13:41 2 yelling.

14:13:44 3 MR. DELLAPORTAS: I was asked to raise
14:13:44 4 my voice --

14:13:45 5 MR. BOWEN: You need to not yell.

14:13:45 6 MR. DELLAPORTAS: -- by the reporter.
14:13:45 7 That's why I did.

14:13:45 8 MR. BOWEN: Yelling is improper.

14:13:49 9 MR. DELLAPORTAS: I didn't yell --

14:13:50 10 MR. BOWEN: You can raise your voice,
14:13:53 11 the volume of your voice, without yelling.

14:13:53 12 MR. DELLAPORTAS: -- I raised my voice
14:13:53 13 because the reporter asked me to raise my
14:13:53 14 voice.

14:13:53 15 MR. BOWEN: I'm asking you not to
14:13:54 16 yell.

14:13:56 17 MR. DELLAPORTAS: I wasn't --

14:13:56 18 BY MR. BOWEN:

14:13:56 19 Q. Now let me try again, Mr. Oldner. This is a
14:13:58 20 brand new question.

14:13:59 21 A. Gentlemen, I'm going to the bathroom.

14:14:00 22 Q. It doesn't have to do with any prior question.

14:14:01 23 A. I'm going to the bathroom at this time. Y'all
14:14:04 24 can argue this out. I'm going to the bathroom.

14:14:05 25 MR. POLLOCK: Mr. Bowen, I would ask

14:14:07 1 while he's going to the bathroom two
14:14:09 2 things. One is that you stop speaking over
14:14:11 3 me.

14:14:11 4 MR. BOWEN: Well, first of all, I'm
14:14:12 5 going to note for the court reporter that
14:14:14 6 the witness stood up and walked out of the
14:14:16 7 room.

14:14:18 8 THE WITNESS: Yes.

14:14:19 9 MR. BOWEN: He's no longer on the
14:14:20 10 camera.

14:14:20 11 MR. POLLOCK: You're right. He went
14:14:20 12 to the bathroom. Mr. Bowen, I will ask
14:14:21 13 that you stop speaking over me when I'm
14:14:24 14 making an objection, and that you stop
14:14:25 15 raising your voice at me, and that you stop
14:14:27 16 badgering the witness, and you stop
14:14:29 17 harassing the witness.

14:14:33 18 THE WITNESS: And I need a mask to go
14:14:34 19 to the restroom. Excuse me. I need my
14:14:35 20 mask.

14:14:37 21 MR. POLLOCK: He needs a mask.

14:14:38 22 Mr. Bowen, I think that what you are
14:14:40 23 doing today is harassing and badgering, and
14:14:43 24 to this time, you haven't even identified
14:14:47 25 who you represent.

14:14:49 1 As long as he's in the bathroom and
14:14:51 2 we're still on the record, at least do me
14:14:53 3 the courtesy of explaining who you are
14:14:55 4 representing in this deposition.

14:15:02 5 MR. BOWEN: Mr. Pollock, we did a roll
14:15:04 6 call at the beginning of the deposition. I
14:15:05 7 stated who I was and who I represent, so
14:15:08 8 I'm not going to play whatever game you're
14:15:10 9 trying to play.

14:15:11 10 MR. POLLOCK: So I --

14:15:11 11 MR. BOWEN: I have no interest in
14:15:12 12 having a colloquy with you, especially on
14:15:14 13 the record. And, and so you need to stop.

14:15:18 14 I'm going to ask you for the umpteenth
14:15:20 15 time to please stop, and especially stop
14:15:21 16 coaching the witness. It really reflects
14:15:25 17 very badly on you.

14:15:26 18 And, unfortunately, it will probably
14:15:26 19 be brought to the attention of Judge
14:15:31 20 Garrity, so you need to stop.

14:15:34 21 MR. POLLOCK: Mr. Bowen, the witness
14:15:35 22 is in the bathroom.

14:15:36 23 MR. BOWEN: Since the witness is not
14:15:36 24 here, we're going off the record to give
14:15:38 25 the court reporter a break.

14:15:39 1 MR. POLLOCK: Great.

14:15:40 2 MR. BOWEN: As soon as the witness
14:15:40 3 returns, please let me know. Thank you.

14:15:42 4 (Three-minute break.)

14:18:48 5 MR. POLLOCK: All right. Mr. Bowen,
14:18:48 6 are you still there? Mr. Bowen, can we get
14:18:52 7 on to the topics of the Motion to Dismiss,
14:18:54 8 so that we can get to the matters at hand?

14:18:57 9 You have spent hours and hours on
14:19:00 10 matters that --

14:19:01 11 MR. BOWEN: I don't know who's
14:19:02 12 speaking. Who's speaking, please?

14:19:04 13 MR. POLLOCK: It's Adam Pollock, and
14:19:06 14 I'm asking you, respectfully, to move on to
14:19:08 15 the Motion to Dismiss. John Dellaportas
14:19:11 16 already indicated that he also has
14:19:13 17 questions today.

14:19:14 18 MR. BOWEN: I, I -- look, you know,
14:19:15 19 this is exactly what I was talking to the
14:19:16 20 witness about was the Motion to Dismiss
14:19:19 21 when, when, when we had the break.

14:19:20 22 BY MR. BOWEN:

14:19:21 23 Q. Mr. Oldner, we're back on the record.

14:19:23 24 MR. POLLOCK: Mr. Bowen --

14:19:28 25 MR. CAVALIERE: This is Rocco

14:19:28 1 Cavaliere. I had also served a subpoena,
14:19:30 2 and Mr. Geron as well.

14:19:33 3 And I think after Mr. Bowen is done,
14:19:35 4 with all due respect, Mr. Dellaportas will
14:19:37 5 have an opportunity to ask questions, but
14:19:39 6 after Mr. Bowen is done, I think Mr. Geron
14:19:41 7 would go next. I'd go after him, and then
14:19:45 8 Mr. Dellaportas, and anyone else that wants
14:19:46 9 to ask questions, if that's okay -- you
14:19:46 10 know, just to have a natural order of
14:19:50 11 things.

14:19:54 12 MR. BOWEN: Let me, let me conclude my
14:19:55 13 portion of this, because I'm almost done,
14:19:57 14 and then, and then we can address that, but
14:19:59 15 I don't want to take time on that.

14:20:00 16 MR. DELLAPORTAS: Okay.

14:20:01 17 THE WITNESS: Can you hear me?

14:20:02 18 MR. BOWEN: Yes, I hear you.

14:20:05 19 MR. POLLOCK: If I can just clarify
14:20:07 20 the record, Mr. Cavaliere did not serve a
14:20:11 21 subpoena. Mr. Cavaliere emailed a
14:20:11 22 subpoena.

14:20:11 23 MR. BOWEN: We can do that later,
14:20:12 24 Mr. Pollock. Please stop talking, so we
14:20:14 25 can conclude.

14:20:16 1 I'm going to -- I'm hoping to wrap
14:20:18 2 this up, at least my portion of the
14:20:21 3 questioning, you know, in a matter of a
14:20:22 4 short amount of time, so please cease and
14:20:25 5 desist.

14:20:25 6 BY MR. BOWEN:

14:20:26 7 Q. Mr. Oldner, I was asking you about the, the
14:20:30 8 Motion to Dismiss, and we got on to the question of
14:20:37 9 what your understanding of your legal obligations are
14:20:39 10 as, as the trustee.

14:20:43 11 Let me just try and do this step by step.
14:20:46 12 I take it you do have an understanding of what your
14:20:49 13 legal obligations are as the trustee; correct?

14:20:52 14 A. Yes, sir.

14:21:26 15 Q. And your understanding is that the trust is
14:20:56 16 governed by New York law; right?

14:20:59 17 A. Yes, sir.

14:21:33 18 Q. And you have New York counsel that has been
14:21:03 19 advising you as the trustee; is that correct?

14:21:06 20 A. Yes, sir.

14:21:08 21 Q. So you have some -- however you want to
14:21:11 22 describe it, you understand you have some special
14:21:14 23 responsibility to the beneficiary of the trust?

14:21:17 24 A. Did you say "beneficiary"?

14:21:19 25 Q. Yes.

14:21:20 1 A. It's beneficiaries, plural.

14:21:52 2 Q. Okay. Well, we -- you know that one

14:21:26 3 beneficiary is Orly Genger; correct?

14:21:29 4 A. Yes. One beneficiary is Orly Genger. The

14:21:30 5 other beneficiary is her daughter. The other

14:21:32 6 beneficiary is future generations.

14:22:05 7 Q. Okay.

14:21:37 8 A. I want to make sure we're on the same page.

14:22:10 9 Q. Right. Well, that, that's helpful that that's

14:21:42 10 part of your understanding as the trustee.

14:21:43 11 A. Yes.

14:21:44 12 Q. So you have to keep in mind not just the

14:21:46 13 interest of Orly Genger but the interests of her

14:21:49 14 descendants; right?

14:21:51 15 A. Yes, sir. Yes, sir.

14:22:27 16 Q. And right now the trust has no assets, other

14:21:58 17 than the two legal claims you mentioned, and it has a

14:22:02 18 multimillion dollar debt; right?

14:22:04 19 A. Yes, sir.

14:22:04 20 Q. Okay.

14:22:05 21 A. Yes, sir. It has multimillion dollar claims

14:22:08 22 and a multimillion dollar debt.

14:22:45 23 Q. Okay. Now before, before I go on to the topic

14:22:15 24 of the Motion to Dismiss I just want to clarify on

14:22:18 25 the release, that was a document that Sagi Genger

14:22:24 1 brought to you in Arkansas on the day that you signed
14:22:27 2 the acceptance of the position; is that right?

14:22:32 3 A. I believe that to be true.

14:23:13 4 Q. So he had two documents; right? He had the
14:22:39 5 document where you accepted the position, and he had
14:22:42 6 a separate document, which was the release of Dalia
14:22:45 7 Genger. Is that right?

14:22:54 8 A. I'm thinking. Yes, he had those two documents
14:22:59 9 for sure.

14:23:29 10 Q. Okay. And your testimony, though, earlier was
14:23:03 11 you don't think he had any other documents with him,
14:23:05 12 and he didn't show you anything else; is that right?

14:23:08 13 A. No, sir. That was not my testimony.

14:23:12 14 Q. Okay. What, what else did he have with him,
14:23:13 15 and what else did he show you?

14:23:16 16 A. The Inter-Creditor Agreement you brought up.

14:23:19 17 Q. That, that was brought up on the very day that
14:23:20 18 you accepted the position?

14:24:05 19 A. Yes.

14:24:06 20 Q. Okay. But you didn't sign that until sometime
14:23:28 21 over the weekend; is that right?

14:23:30 22 A. Yes, sir.

14:24:11 23 Q. Why -- what was the delay in signing that?

14:23:34 24 A. Are you asking what I'm thinking, what I was
14:23:42 25 thinking when I did that?

14:23:45 1 Q. Yes. I'm asking why you didn't just sign it
14:23:48 2 when you signed everything else.

14:23:50 3 A. Because I wanted to understand how that was
14:23:55 4 beneficial to the trust.

14:24:32 5 Q. And how did you go about making a determination
14:24:06 6 that it was beneficial to the trust?

14:24:08 7 MR. POLLOCK: And, again, I would
14:24:10 8 caution the witness to the extent that he,
14:24:11 9 his analysis was with legal counsel that he
14:24:15 10 not testify to that analysis.

14:24:18 11 A. Mr. Bowen, I'm, I'm going to have to decline to
14:24:21 12 answer that on the basis that my decision to sign
14:24:26 13 that was with the assistance of legal counsel.

14:25:15 14 Q. So to answer that question would reveal
14:24:34 15 privileged attorney-client communication?

14:24:37 16 A. Yes.

14:24:39 17 Q. Now going back to the Motion to Dismiss,
14:24:46 18 leaving aside any communications with lawyers --

14:24:50 19 A. Okay.

14:24:51 20 Q. -- or privileged communications, did you have
14:24:53 21 an understanding about why the trust is no longer, no
14:24:57 22 longer seeking to dismiss the bankruptcy?

14:25:12 23 MR. POLLOCK: Objection; asked an
14:25:13 24 answered.

14:25:14 25 Q. You can answer it.

14:25:14 1 MR. POLLOCK: Well, I don't know if he
14:25:16 2 can without revealing his privileged
14:25:18 3 communications.

14:25:23 4 MR. BOWEN: Well, Adam, Mr. Pollock,
14:25:24 5 that's, again, coaching, and I'm, I've
14:25:26 6 already prefaced my question with saying I
14:25:29 7 don't want him to reveal attorney-client
14:25:32 8 communications, but he can certainly reveal
14:25:35 9 his own understanding in the responsible
14:25:38 10 position that he has as the trustee.

14:25:40 11 THE WITNESS: Okay.

14:25:41 12 BY MR. BOWEN:

14:25:41 13 Q. So the trustee, ultimately -- let me put it
14:25:44 14 this way, Mr. Oldner. I'll change the question. You
14:25:47 15 understand that the trustee is ultimately responsible
14:25:50 16 for positions that the trust is taking in litigation;
14:25:54 17 right?

14:26:27 18 A. Yes, sir, I do.

14:25:58 19 Q. And you take that responsibility seriously?

14:26:01 20 A. Yes, sir. I would not be suing people if I
14:26:04 21 didn't take it very seriously.

14:26:08 22 Q. And you testified earlier that you saw this as
14:26:11 23 a position where you had a, you had an obligation, or
14:26:18 24 at least an understanding that you wanted to be fair
14:26:20 25 and impartial; right?

14:26:22 1 A. Yes, sir. That is true.

14:26:23 2 Q. And, and you want your actions as the trustee
14:26:27 3 to be in the best interest or Orly Genger and her
14:26:30 4 descendents; right?

14:26:32 5 A. Yes.

14:26:34 6 Q. So --

14:26:34 7 A. In accordance with, in accordance with how the
14:26:36 8 trust intended it to be, is how I interpret that, in
14:26:41 9 conjunction with my attorneys.

14:27:18 10 Q. So having that in mind, what was your thinking,
14:26:47 11 your personal thinking -- I'm not asking what you
14:26:51 12 learned from the lawyers or, or anything else. I'm
14:26:53 13 just asking what your view was about why the trust is
14:26:58 14 no longer seeking to dismiss the bankruptcy.

14:27:09 15 A. Every bit -- everything that I had, every
14:27:12 16 understanding I had, dismissing of bankruptcy,
14:27:15 17 removing it to another location, those are all
14:27:18 18 communications that I've have with attorneys.

14:27:24 19 Q. I understand, sir, and I'm not --

14:27:24 20 A. All of the information -- I'm not trying to
14:27:28 21 avoid your question. It's just everything that I, I
14:27:31 22 know about it involves issues that I have gone over
14:27:35 23 with attorneys.

14:27:36 24 They aren't things that I got up in the
14:27:39 25 middle of the night and worked out on a computer. It

14:27:42 1 really is a discussion between -- and since it's been
14:27:47 2 in New York, it's been a lengthy discussion between
14:27:50 3 me and Mr. Pollock, far more lengthy than it was
14:27:55 4 between me and Mr. Ong, which was extensive. I
14:27:58 5 don't --

14:27:59 6 Q. But, but let's leave -- let's just leave that.
14:28:00 7 Mr. Oldner, I'm trying to be clear. I'm not asking
14:28:02 8 you to tell me about your interaction with the
14:28:04 9 lawyers on this.

14:28:05 10 I'm not asking you to say what you asked
14:28:07 11 them, what they told you, what you learned from them.
14:28:11 12 Let's leave all of that aside.

14:28:13 13 You came to the conclusion that the trust
14:28:16 14 would no longer make a Motion to Dismiss the
14:28:21 15 bankruptcy. My only question is why?

14:28:24 16 A. My --

14:28:25 17 MR. POLLOCK: Mr. Bowen, you have
14:28:27 18 asked this question a half dozen times now,
14:28:29 19 and he has answered a half dozen times that
14:28:31 20 all of his analysis and decision making is
14:28:33 21 inextricably linked to attorneys.

14:28:36 22 Now you have asked it six times.
14:28:37 23 You're harassing him, and you're badgering
14:28:39 24 him. You have your answer. Check the
14:28:42 25 transcript. Move along.

14:28:44 1 Q. Mr. Oldner, you can answer the question.

14:28:47 2 MR. POLLOCK: He is not going to
14:28:48 3 answer.

14:28:49 4 Q. Just leave aside, I'm not asking you to say
14:28:50 5 anything about what the lawyers said to you.

14:28:53 6 MR. POLLOCK: He has answered the
14:28:55 7 question six times.

14:28:56 8 Q. What is your understanding about what the
14:28:56 9 trust -- let me, let me try it differently. I'll
14:28:57 10 withdraw that question.

14:28:57 11 A. Okay.

14:28:57 12 Q. My question is what is the trust's position
14:29:01 13 about whether or not the bankruptcy should be
14:29:04 14 dismissed?

14:29:05 15 A. The trust did not take a position on whether or
14:29:14 16 not the bankruptcy should be dismissed in New York.

14:29:22 17 Q. So your answer is the trust doesn't take a
14:29:24 18 position and is indifferent to whether the bankruptcy
14:29:30 19 is dismissed or not?

14:29:33 20 MR. DELLAPORTAS: Object to form.

14:29:34 21 A. No, sir, that's not what I said.

14:29:35 22 Q. I'm trying to understand what you said. You
14:29:37 23 said that the trust didn't take a position.

14:29:39 24 A. That is correct.

14:30:08 25 Q. But is that because the trust doesn't care

14:29:42 1 whether the bankruptcy is dismissed or not?

14:29:45 2 A. I'm saying the trust didn't take a position.

14:29:48 3 Q. And it doesn't take a position because the

14:29:50 4 trust doesn't care?

14:29:53 5 MR. POLLOCK: Mr. Bowen, you have
14:29:54 6 completely mischaracterized the testimony.

14:29:56 7 You have got your answer. Please move on.

14:29:59 8 You're also, again, although you claim

14:30:02 9 you're not, you are getting clearly into

14:30:05 10 legal analysis and legal strategy, which is

14:30:09 11 wholly inappropriate, and I ask you for the

14:30:11 12 umpteenth time to stop asking the witness

14:30:15 13 for his legal strategy and his legal

14:30:19 14 communications. It's enough. Move on.

14:31:04 15 MR. BOWEN: Mr. Pollock, everything
14:30:24 16 that you just said makes no sense, and I'd
14:30:27 17 ask you to again desist from making these
14:30:30 18 speaking objections and trying to coach
14:30:32 19 your witness.

14:30:32 20 BY MR. BOWEN:

14:30:33 21 Q. Mr. Oldner, as the trustee, you approved filing
14:30:37 22 a Motion to Dismiss or a joinder by the trust when
14:30:42 23 this case was in Texas; correct?

14:30:46 24 A. Yes, sir. That is correct.

14:30:49 25 MR. DELLAPORTAS: Objection, John

14:30:54 1 Dellaportas.

14:30:56 2 Q. What -- why, to your understanding -- and,
14:30:56 3 again, leave out anything with the lawyers. Just
14:30:57 4 what was your thinking about why it was in the best
14:31:01 5 interest of Orly Genger and her descendants that her
14:31:08 6 bankruptcy be dismissed when you filed that joinder?

14:31:12 7 MR. POLLOCK: Mr. Bowen, I object, but
14:31:15 8 also Mr. Dellaportas was trying to get an
14:31:19 9 objection onto the record when you spoke
14:31:19 10 over him.

14:31:19 11 Dellaportas, did you want to say
14:31:21 12 something?

14:31:23 13 MR. DELLAPORTAS: Sorry, I think my
14:31:26 14 objection was a couple of questions ago.
14:31:27 15 It was just an objection to form.

14:31:31 16 MR. POLLOCK: So, Mr. Bowen, you are
14:31:32 17 clearly seeking to invade his legal
14:31:35 18 communications and his legal strategy.

14:31:37 19 I ask you again and again to move
14:31:42 20 along.

14:31:42 21 You're also now asking about a Motion
14:31:44 22 to Dismiss or, in the alternative, to
14:31:46 23 transfer. That was decided and is no
14:31:50 24 longer before this court.

14:31:51 25 We have a clear scheduling order

14:31:53 1 limiting discovery to the Motion to
14:31:54 2 Dismiss, which is Sagi's motion.
14:31:58 3 You're out of bounds asking him about
14:32:01 4 his legal strategy with respect to a
14:32:04 5 disposed motion. I ask you respectfully to
14:32:07 6 move along.

14:32:10 7 Q. You can answer the question, Mr. Oldner. The
14:32:13 8 question is what, to your understanding, as the
14:32:15 9 trustee was -- well, let me, let me start again.

14:32:22 10 A. Before you ask your question, sir.

14:32:24 11 Q. To your -- go ahead.

14:32:25 12 A. Before you ask your question, may I go off the
14:32:28 13 record and have one word with my attorneys?

14:32:31 14 Q. Sure.

14:32:32 15 MR. POLLOCK: No, you actually don't
14:32:33 16 get to do that while there is a question
14:32:36 17 pending.

14:32:36 18 A. Sorry.

14:32:39 19 Q. That's totally fine with me. Do you want to
14:32:40 20 take a minute --

14:32:41 21 A. No --

14:32:41 22 Q. -- and talk to your attorneys?

14:32:41 23 A. -- no, I want to play by the rules. I'm sorry.
14:32:42 24 Go ahead.

14:32:42 25 MR. POLLOCK: Let him ask his

14:32:43 1 question, and then you can answer it, or
14:32:45 2 not, if you can't --

14:32:46 3 A. I'm sorry.

14:32:46 4 MR. POLLOCK: -- and then you can have
14:32:47 5 a break and talk to your counsel.

14:32:49 6 A. I apologize. Mr. Bowen, I'm sorry.

14:32:52 7 Q. All right. Well, you're not getting that from
14:32:54 8 me. Your own lawyer is telling you he doesn't want
14:32:56 9 to talk to you, but it's fine with me if you want to
14:32:56 10 talk to him.

14:32:57 11 MR. POLLOCK: I am happy to talk to
14:32:58 12 him after he attempts to answer your
14:33:00 13 question again.

14:33:02 14 Q. The question is why did you conclude as the
14:33:06 15 trustee that moving to dismiss the bankruptcy was in
14:33:10 16 the best interest of Orly Genger and her descendants?

14:33:15 17 MR. POLLOCK: I object, again, in that
14:33:16 18 this purely calls for legal --

14:33:19 19 MR. BOWEN: You already objected. You
14:33:20 20 keep saying the same thing all over again,
14:33:23 21 and you're never even going to let the
14:33:25 22 witness answer the question. I mean, this
14:33:25 23 is getting absurd.

14:33:25 24 MR. POLLOCK: You are correct --

14:33:25 25 MR. BOWEN: You preserved your

14:33:25 1 objection. Please let the witness answer.

14:33:29 2 MR. POLLOCK: You are correct that as
14:33:30 3 many times as you ask a question that calls
14:33:31 4 for a legal analysis, I am not going to let
14:33:33 5 him answer that. Now let me --

14:33:35 6 MR. BOWEN: I am not asking for a
14:33:36 7 legal analysis. I don't understand why you
14:33:39 8 think that.

14:33:39 9 BY MR. BOWEN:

14:33:39 10 Q. Mr. Oldner, I'm not asking you for a legal
14:33:42 11 analysis. I'm asking you for your view as the
14:33:44 12 trustee, who is acting in the best interest, or
14:33:48 13 trying to act in the best interest in all good faith
14:33:49 14 in the best interest of Orly Genger and her
14:33:53 15 descendants, why did you take the position, or why
14:33:56 16 did you conclude at the time that you joined a Motion
14:33:58 17 to Dismiss Orly Genger's bankruptcy that that was in
14:34:02 18 his best interest and the best interest of her
14:34:04 19 descendants?

14:34:05 20 MR. POLLOCK: Again --

14:34:05 21 Q. What was your thinking about that, not legal
14:34:08 22 analysis? Why did you think that was the right thing
14:34:11 23 for you to do as the trustee for Orly Genger and her
14:34:13 24 descendants?

14:34:16 25 MR. POLLOCK: Again, you are seeking

14:34:17 1 to elicit legal analysis under the guise of
14:34:21 2 seeking only his understanding about a
14:34:23 3 complicated legal issue.

14:34:24 4 I'm not going to let him answer that
14:34:26 5 question. If he wants to take a break
14:34:27 6 and --

14:34:28 7 MR. BOWEN: What's complicated about
14:34:28 8 the legal issue? It's whether Orly Genger
14:34:30 9 should be allowed to seek bankruptcy
14:34:32 10 protection or not.

14:34:34 11 MR. POLLOCK: I think --

14:34:34 12 BY MR. BOWEN:

14:34:34 13 Q. Mr. Oldner, why don't you talk to your lawyer
14:34:36 14 and see if we can get past the impasse.

14:34:38 15 MR. POLLOCK: Okay. Okay. That's
14:34:38 16 fine.

14:34:39 17 MR. KURLAND: What was the last
14:34:40 18 question?

14:34:41 19 MR. POLLOCK: That's fine. Why don't
14:34:42 20 we do exactly what he suggested.

14:34:45 21 MR. HERSCHMANN: It's Eric Herschmann.
14:34:45 22 Adam, have you been instructing him not to
14:34:47 23 answer when you have made that it's an
14:34:49 24 issue, a legal issue intertwined?

14:34:52 25 I have never heard you say you are

14:34:53 1 instructing him not to answer. Is that
14:34:55 2 what you're doing, or that's what you've
14:34:57 3 been doing?

14:34:59 4 MR. POLLOCK: Mr. Herschmann, I have
14:34:59 5 instructed him not to give an answer that
14:34:59 6 reveals legal analysis and legal
14:35:01 7 communications.

14:35:04 8 I believe that the question is purely
14:35:07 9 seeking to elicit legal analysis derived
14:35:10 10 from his legal communications with his
14:35:12 11 attorney.

14:35:12 12 I think it falls squarely within work
14:35:15 13 product, within work product privilege,
14:35:17 14 and, furthermore, work product privilege or
14:35:18 15 attorney-client privilege, if Mr. Bowen
14:35:21 16 wants to know the reasons that Mr. Oldner
14:35:24 17 believed that the motions that the
14:35:25 18 bankruptcy case should be dismissed, or in
14:35:28 19 the alternative transferred, I respectfully
14:35:31 20 refer Mr. Bowen to the document that was
14:35:35 21 filed in Texas that explicitly says the
14:35:40 22 reasons that the trust believes that the,
14:35:44 23 that the case should be dismissed, or in
14:35:46 24 the alternative transferred. That said,
14:35:50 25 Mr. Oldner asked for a break. Let's take a

14:35:54 1 break.

14:45:21 2 MR. KURLAND: That wasn't the question
14:35:56 3 either.

14:35:56 4 MR. HERSCHMANN: Mr. Pollock, this is
14:35:56 5 Eric Herschmann. I just want to say one
14:35:56 6 thing.

14:35:56 7 MR. POLLOCK: Yeah.

14:35:56 8 MR. HERSCHMANN: Based on what you
14:35:59 9 just said, it can't be privileged, because
14:36:00 10 you said it's already been disclosed in a
14:36:03 11 document. Why don't you consult with your
14:36:06 12 client and take a break?

14:36:07 13 MR. POLLOCK: I'm happy to take a
14:36:09 14 break.

14:36:10 15 THE WITNESS: It's time to take a
14:36:11 16 break anyway.

14:36:21 17 MR. BOWEN: Five minutes?

14:36:21 18 THE WITNESS: Ten.

14:36:22 19 (Nine-minute break.)

14:45:13 20 BY MR. BOWEN:

14:45:15 21 Q. Mr. Oldner, I'm just going to ask this one more
14:45:20 22 time, and if you're refusing to answer, just, just
14:45:22 23 say so.

14:45:25 24 How was the, the dismissal of Orly Genger's
14:45:30 25 bankruptcy in her best interest and in the best

14:45:35 1 interest of her decedents, descendants, when you
14:45:41 2 filed the joinder in the Motion to Dismiss in Austin,
14:45:44 3 Texas?

14:45:45 4 MR. POLLOCK: Objection to form and
14:45:46 5 mischaracterizes the testimony.

14:45:51 6 Q. You can answer.

14:45:52 7 A. I believe that you can find everything about
14:45:57 8 how I felt about that by reading the joinder itself.

14:46:00 9 Q. But I'm asking for your understanding, not what
14:46:04 10 your lawyers wrote. What is your understanding?

14:46:05 11 A. I okayed that. That is my understanding in
14:46:09 12 depth.

14:46:11 13 Q. And your understanding is that the joinder, the
14:46:15 14 written brief explains why it's in the best interest
14:46:20 15 of Orly Genger?

14:46:21 16 MR. POLLOCK: Objection;
14:46:21 17 mischaracterizes the testimony.

14:46:24 18 Q. You can answer.

14:46:26 19 A. I believe that it is in the best interest of
14:46:28 20 Orly Genger's descendants that there's money in the
14:46:32 21 trust. If there's no money --

14:46:33 22 Q. That's not the question. The question is why
14:46:37 23 was it in the best interest of Orly Genger and her
14:46:40 24 descendants that her bankruptcy be dismissed?

14:46:44 25 MR. POLLOCK: Objection; asked and

14:46:45 1 answered.

14:46:45 2 Q. -- joined?

14:46:47 3 MR. POLLOCK: Objection; asked and

14:46:47 4 answered.

14:47:37 5 Q. You can answer.

14:46:52 6 A. If the bankruptcy dismisses the claims against

14:46:56 7 Orly Genger, or Orly Genger, discharges Orly Genger,

14:46:57 8 that's great.

14:46:59 9 If the bankruptcy dismisses the claims of

14:47:02 10 the trust, that's not, that doesn't help her

14:47:05 11 descendents.

14:47:54 12 Q. So you think dismissing the bank, the

14:47:17 13 bankruptcy would have helped the trust preserve its

14:47:22 14 claims to the \$32 million?

14:47:26 15 MR. POLLOCK: Objection;

14:47:26 16 mischaracterizes the testimony.

14:47:36 17 Q. Is that correct?

14:48:07 18 A. I think that the trust claims to the

14:47:38 19 \$32 million should be able to be adjudicated outside

14:47:42 20 of bankruptcy.

14:47:43 21 Q. And you think that's in the best interest of

14:47:47 22 Orly Genger and her descendents?

14:47:50 23 A. I certainly do.

14:47:51 24 Q. So in that case, why are you not joining in the

14:47:54 25 Motion to Dismiss now?

14:47:55 1 A. That information is completely based on
14:47:58 2 discussion with current counsel. That would be.

14:48:02 3 Q. So --

14:48:02 4 A. -- 100 percent privileged.

14:48:42 5 Q. So nothing has changed, in your mind, except
14:48:09 6 that there's a legal, technical, or strategic reason
14:48:14 7 not to join the motion; is that correct?

14:48:18 8 MR. POLLOCK: Objection. You're,
14:48:18 9 again, seeking -- and he just told you that
14:48:20 10 what you are seeking is analysis performed
14:48:24 11 in anticipation of litigation or in
14:48:26 12 conjunction with counsel.

14:48:28 13 Q. Is that correct, what I said, Mr. Oldner, that
14:48:34 14 as far as you're concerned, nothing has changed. It
14:48:37 15 would preferable to litigate the trust claims outside
14:48:39 16 of bankruptcy, but for some privileged reason, the
14:48:43 17 decision was made by you, because it's your
14:48:45 18 responsibility, not to join the Motion to Dismiss; is
14:48:48 19 that correct?

14:49:16 20 A. I believe that everything that you just
14:48:51 21 mentioned is legal in matter. It has nothing to do
14:48:55 22 with judgment outside of being legal in matter, and
14:48:58 23 so, consequently, everything that I decided on it was
14:49:02 24 based on a discussion between me and my lawyer. So,
14:49:05 25 yes, I am not answering that question because every

14:49:07 1 answer I would give is privileged.

14:49:14 2 Q. But you understand that the responsibility is
14:49:15 3 yours, not your lawyers'; correct?

14:49:55 4 A. Yes, I do.

14:49:18 5 Q. And you understand the lawyers work for you?
14:49:21 6 You understand that; right?

14:49:29 7 A. Yes, I do.

14:49:29 8 Q. So Mr. Sagi Genger claims in his current Motion
14:49:33 9 to Dismiss that the bankruptcy is a fraud, and it was
14:49:38 10 brought in bad faith by Orly Genger. Do you agree
14:49:42 11 with that?

14:49:43 12 A. Yes.

14:49:45 13 MR. POLLOCK: Objection.

14:49:46 14 MR. DELLAPORTAS: Objection; misstates
14:49:46 15 the record. This is Dellaportas.

14:49:51 16 Q. Do you agree with that, Mr. Oldner?

14:49:53 17 MR. POLLOCK: Hold on. Objection.

14:49:54 18 You're asking Mr. Oldner to characterize a
14:49:58 19 heavily redacted motion made by Sagi
14:50:04 20 Genger. I think it's completely
14:50:06 21 inappropriate.

14:50:07 22 Q. You can answer the question, Mr. Oldner. Do
14:50:09 23 you agree with that claim that Sagi Genger has made?

14:50:14 24 MR. POLLOCK: And, also, he's already
14:50:15 25 answered this question repeatedly about his

14:50:17 1 position, sorry, the trust's position with
14:50:20 2 respect to the motion.

14:50:22 3 You asked him again and again and
14:50:24 4 again. It's enough. You're harassing him
14:50:26 5 now.

14:50:27 6 MR. BOWEN: You are really just
14:50:28 7 blatantly coaching the witness. I would
14:50:31 8 ask you to stop.

14:50:32 9 BY MR. BOWEN:

14:50:32 10 Q. Mr. Oldner, do you agree with that statement
14:50:33 11 that Sagi Genger has made in his Motion to Dismiss?

14:50:39 12 MR. DELLAPORTAS: Objection, for the
14:50:40 13 record, misdescribed the motion. I would
14:50:43 14 ask that the proper motion, the actual
14:50:45 15 motion be placed in front of the witness if
14:50:47 16 you want him to have comments on it.

14:50:47 17 Mr. Bowen's characterizations of the
14:50:49 18 motion are false and -- for any kind of
14:50:49 19 proper testimony.

14:50:53 20 MR. POLLOCK: Two things, one is --

14:50:53 21 BY MR. BOWEN:

14:50:56 22 Q. Go ahead, Mr. Oldner, please answer the
14:50:59 23 question.

14:51:00 24 MR. POLLOCK: Mr. Dellaportas, if you
14:51:02 25 can please keep your voice up when you're

14:51:02 1 speaking. It will be easier for the
14:51:02 2 stenographer. That's A.

14:51:06 3 B is I share similar concerns, to the
14:51:08 4 extent that I could hear them. To the
14:51:11 5 extent you're asking him to take a position
14:51:13 6 on a pending motion, I would ask that you
14:51:15 7 put the motion in front of him and ask him
14:51:18 8 what his position in.

14:51:19 9 In fact, you have asked him repeatedly
14:51:22 10 what his position is, and now you are
14:51:24 11 harassing him.

14:51:25 12 I am asking you respectfully to move
14:51:27 13 on and stop harassing this witness in
14:51:29 14 Arkansas.

14:51:30 15 BY MR. BOWEN:

14:52:04 16 Q. Mr. Oldner, do you agree with that
14:51:34 17 characterization of -- well, let me ask it this way.
14:51:37 18 Do you agree that the, the allegations in Sagi
14:51:47 19 Genger's Motion to Dismiss and his basis for
14:51:49 20 dismissing the bankruptcy; do you agree with them?

14:51:53 21 MR. POLLOCK: Mr. Bowen, I have the
14:51:53 22 same objections. You're asking him to
14:51:54 23 analyze a heavily redacted document that's
14:51:57 24 not in front of him, and asking him if he
14:51:59 25 agrees with it. That is totally improper.

14:52:02 1 Give him --

14:52:04 2 Q. Mr. Oldner, do you agree with the basis for
14:52:07 3 dismissal that Sagi Genger made in his Motion to
14:52:11 4 Dismiss?

14:52:11 5 A. Mr. Bowen, I have not seen that Motion to
14:52:15 6 Dismiss.

14:52:17 7 Q. Do you agree that Orly Genger filed for
14:52:22 8 bankruptcy in bad faith solely to deprive Sagi Genger
14:52:27 9 of being able to enforce his multimillion dollar
14:52:30 10 judgment against her?

14:52:31 11 MR. POLLOCK: Mr. Oldner -- Mr.
14:52:31 12 Bowen -- excuse me -- he is not a
14:52:35 13 percipient witness to anything you're
14:52:38 14 asking about. What you're asking for is
14:52:39 15 mere speculation and is wholly improper.

14:52:48 16 MR. HERSCHMANN: It's Eric Herschmann
14:52:48 17 again.

14:52:49 18 MR. DELLAPORTAS: John Dellaportas, I
14:52:49 19 also object. It misstates the record. It
14:52:50 20 mischaracterizes the motion. That's not
14:52:53 21 what the motion says.

14:52:56 22 MR. HERSCHMANN: It's Eric Herschmann.
14:52:58 23 I'm going to again ask that we please stop
14:53:01 24 the speaking objections, so we don't have
14:53:01 25 to go to Judge Garrity and bother him

14:53:02 1 again.

14:53:05 2 There's -- we've offered a standing
14:53:05 3 objection to every single question, so
14:53:09 4 everything can be preserved.

14:53:10 5 I'm just asking again so when we go to
14:53:10 6 Judge Garrity, he knows that we have
14:53:10 7 offered it on multiple occasions.

14:53:13 8 MR. POLLOCK: And I'm asking Mr.
14:53:15 9 Bowen --

14:53:15 10 BY MR. BOWEN:

14:53:16 11 Q. Mr. Oldner, did you read the Motion to Dismiss
14:53:18 12 that was filed by Sagi Genger in the Southern
14:53:21 13 District of New York?

14:53:25 14 MR. DELLAPORTAS: Objection; asked and
14:53:26 15 answered.

14:53:27 16 Q. You can answer again. I don't think I asked it
14:53:27 17 before. Did you read it?

14:53:29 18 A. No, I have not.

14:54:00 19 Q. So do you have any understanding of what the
14:53:34 20 basis is that Sagi Genger has articulated for
14:53:39 21 dismissing the bankruptcy?

14:53:40 22 MR. POLLOCK: Are you asking for his
14:53:42 23 legal analysis of Sagi Genger's --

14:53:43 24 MR. BOWEN: No, Mr. Pollock, I'm not
14:53:45 25 asking for anybody's legal analysis, and

14:53:48 1 it's really becoming tiresome. Please
14:53:49 2 stop.

14:53:49 3 I'm asking for Mr. Pollock {sic}, who
14:53:50 4 has a responsibility to make decisions for
14:53:52 5 the trust. It's a serious responsibility,
14:53:55 6 which he has acknowledged.

14:53:57 7 MR. HERSCHMANN: I think you meant --

14:53:58 8 MR. BOWEN: Please let him answer the
14:53:59 9 question. The question is a very simple
14:54:02 10 one.

14:54:03 11 MR. POLLOCK: Mr. Bowen --

14:54:04 12 BY MR. BOWEN:

14:54:04 13 Q. Mr. Oldner, I'm asking you now, do you have --
14:54:04 14 (All attorneys talking over one another)

14:54:27 15 MR. HERSCHMANN: Can I make --

14:54:27 16 COURT REPORTER: Let me speak first.
14:54:27 17 I cannot understand anyone when you speak
14:54:27 18 over each other, so your record is not
14:54:27 19 going to be complete.

14:54:27 20 MR. POLLOCK: Mr. Bowen, this would go
14:54:29 21 a lot more smoothly if you would stop
14:54:29 22 yelling at me.

14:54:29 23 I have asked you repeatedly today to
14:54:32 24 stop raising your voice, and stop yelling
14:54:34 25 at me, and to stop yelling at the witness.

14:54:36 1 This is completely inappropriate.

14:54:39 2 MR. BOWEN: Mr. Pollock, I have had it
14:54:40 3 with you. I ask you to just stop talking,
14:54:42 4 please.

14:54:42 5 MR. POLLOCK: And I would ask you --

14:54:44 6 MR. BOWEN: Your behavior is very much
14:54:44 7 a problem. It has been obstructionist, and
14:54:47 8 it's, and it's going to have to be
14:54:48 9 addressed with the Court, as much as I
14:54:50 10 don't want to waste my time. But I ask you
14:54:52 11 to stop.

14:54:53 12 BY MR. BOWEN:

14:54:53 13 Q. Mr. Oldner, it's a very simple question. Do
14:54:56 14 you have any understanding of what the basis is that
14:55:00 15 Sagi Genger has alleged for dismissing the
14:55:03 16 bankruptcy?

14:55:05 17 A. I have not read Sagi Genger's Motion to Dismiss
14:55:08 18 that was filed in New York --

14:55:11 19 Q. And --

14:55:11 20 A. -- so, therefore, I would --

14:55:13 21 Q. And not --

14:55:13 22 A. -- not have an understanding of it.

14:55:41 23 Q. So you have no understanding of what he is
14:55:17 24 alleging in the Motion to Dismiss?

14:55:19 25 A. I have not read the Motion to Dismiss.

14:55:50 1 Q. Well, do you have any understanding of what
14:55:26 2 kind of claims he's making in the bankruptcy?

14:55:29 3 MR. POLLOCK: Again, Mr. Bowen, you
14:55:30 4 appear to be --

14:55:32 5 Q. Only on the Motion to Dismiss. Do you have an
14:55:34 6 understanding of that?

14:56:02 7 MR. POLLOCK: Again, Mr. Bowen, you
14:56:02 8 appear to be seeking to elicit privileged
14:56:02 9 communications with respect to Mr. Oldner's
14:55:41 10 understanding derived from his
14:55:44 11 communications between him or his counsel,
14:55:46 12 on advice of counsel, or in anticipation of
14:55:50 13 litigation. You have asked him --

14:55:53 14 MR. BOWEN: Mr. Pollock, with all due
14:55:55 15 respect, how do you know that? How do you
14:55:57 16 know that Mr. Oldner has never discussed it
14:55:59 17 with Sagi?

14:56:01 18 MR. POLLOCK: Why don't you start
14:56:02 19 by --

14:56:02 20 MR. BOWEN: You keep trying to testify
14:56:03 21 for your own witness, and I really think
14:56:05 22 it's, it's beyond improper, and I don't
14:56:08 23 know why you're doing it, but I would ask
14:56:10 24 you again to stop.

14:56:38 25 MR. POLLOCK: Mr. Bowen, you appear to

14:56:38 1 be --

14:56:38 2 BY MR. BOWEN:

14:56:13 3 Q. Mr. Oldner, I'm not asking for any privileged
14:56:15 4 communications with lawyers. I'm just asking do you
14:56:17 5 have an understanding from some other source other
14:56:19 6 than reading the Motion to Dismiss what, what the
14:56:23 7 bases are that Sagi Genger is alleging as the reason
14:56:26 8 to dismiss the bankruptcy?

14:56:29 9 MR. POLLOCK: That's great, Mr. Bowen.

14:56:30 10 Please lay a foundation. You could ask
14:56:32 11 him, Have you talked about this motion with
14:56:34 12 Sagi? Have you talked with so-and-so?

14:56:36 13 Ask him for areas where he may have
14:56:39 14 learned about the motion outside of
14:56:41 15 privileged communication, if that's what
14:56:43 16 you're seeking.

14:56:50 17 Q. Can you answer the question the way I asked it?

14:56:53 18 A. I hate to do this. Would you please ask it
14:56:53 19 again?

14:56:53 20 Q. Other than reading the motion, which you've
14:56:55 21 testified you didn't do, did you learn from some
14:56:58 22 other source what the basis is for the motion?

14:57:01 23 A. I did not.

14:57:36 24 Q. And you have never discussed it with Sagi
14:57:08 25 Genger; correct?

14:57:10 1 A. Have Sagi Genger and I discussed the Motion to
14:57:12 2 Dismiss? Yes, we have had conversations about it.
14:57:15 3 Have we discussed the contents of the Motion to
14:57:17 4 Dismiss, not that I recall.

14:57:20 5 Q. Did you discuss --

14:57:20 6 A. And I think I would remember that.

14:58:15 7 Q. I'm sorry. What did you say?

14:58:15 8 A. And I think I would remember that.

14:58:15 9 Q. Okay. Did you discuss with Sagi Genger the
14:57:29 10 fact that the trust would not be joining the Motion
14:57:36 11 to Dismiss?

14:57:40 12 A. Not to my recollection. My only discussions of
14:57:46 13 the Motion to Dismiss, Mr. Bowen, were with
14:57:52 14 Mr. Pollock.

14:58:41 15 Q. Did -- were you aware that Sagi Genger has made
14:58:03 16 a claim that Orly Genger is trying to conceal the
14:58:12 17 \$32 million in order to frustrate his ability to
14:58:15 18 enforce his judgment against Orly Genger?

14:58:21 19 MR. DELLAPORTAS: This is Dellaportas.
14:58:22 20 Objection; misstates the record, and the
14:58:25 21 motion, and the claim. Please don't do
14:58:27 22 that.

14:58:27 23 Q. Were you aware of that claim by Sagi Genger?

14:58:34 24 A. As you stated it, no, I'm not.

14:59:10 25 Q. Are you aware of a claim by Dalia Genger that

14:58:42 1 she's entitled to the 32, the same \$32 million that
14:58:47 2 the trust is taking the position belongs to the
14:58:50 3 trust?

14:58:52 4 MR. DELLAPORTAS: Same objection.
14:58:53 5 This is Dellaportas. No such claim by
14:58:54 6 Dalia Genger.

14:58:56 7 MR. POLLOCK: Yeah, I object on the
14:58:57 8 grounds that I believe it mischaracterizes
14:59:00 9 Dalia's Adversary Complaint.

14:59:03 10 And what's more is the judge
14:59:05 11 specifically said that we're not doing
14:59:06 12 discovery now on Dalia's Adversary
14:59:10 13 Complaint. I would ask you to move on to
14:59:12 14 topics that Garrity permitted.

14:59:16 15 MR. HERSCHMANN: This is Eric
14:59:17 16 Herschmann again. I'm going to again say
14:59:20 17 if you guys would just state "Objection,"
14:59:22 18 they're all preserved.

14:59:22 19 (Zoom connection was lost.)

14:59:22 20 THE WITNESS: I can't hear anybody.
14:59:22 21 Mr. Bowen, I can't hear you.

14:59:22 22 (Off the record to reconnect)

14:59:22 23 BY MR. BOWEN:

15:06:31 24 Q. So, Mr. Oldner --

15:06:32 25 A. Yes, sir.

15:06:33 1 Q. -- let me try it this way.

15:06:34 2 A. Can you hear me now?

15:06:36 3 Q. Yes, sir. Yes, sir.

15:06:36 4 A. Okay. Thank you.

15:06:39 5 Q. You made a judgment in your position as trustee

15:06:43 6 that it was in the best interest of Orly Genger and

15:06:47 7 her descendents as the beneficiaries of the trust

15:06:51 8 that the bankruptcy, that Orly Genger's bankruptcy be

15:06:56 9 dismissed. And you made that determination when the

15:07:00 10 bankruptcy was pending in Texas; is that correct?

15:07:36 11 MR. POLLOCK: Objection; misstates the

15:07:04 12 prior testimony, and misstates the motion

15:07:07 13 that was filed in Texas.

15:07:09 14 Q. Is that correct, sir?

15:07:11 15 A. I filed a joinder to the Motion to Dismiss.

15:07:17 16 Q. And you did that because you made the judgment

15:07:20 17 or the determination that that was in the best

15:07:23 18 interest of the beneficiaries of the trust; right?

15:07:59 19 A. Beneficiaries, yes. Beneficiaries of the

15:07:29 20 trust, yes.

15:08:03 21 Q. And now that the bankruptcy is in New York, you

15:07:36 22 made the determination that it's no longer in the

15:07:39 23 best interest of the beneficiaries of the trust that

15:07:42 24 the bankruptcy be dismissed; is that correct?

15:07:46 25 MR. POLLOCK: Objection; misstates the

15:07:48 1 record.

15:08:22 2 Q. Is that correct?

15:07:54 3 A. Will you ask that again, please?

15:07:57 4 Q. Now that the case is in bankruptcy court in New
15:08:00 5 York, you have made the determination that it's no
15:08:03 6 longer in the best interest of Orly Genger and her
15:08:07 7 descendants as the beneficiaries of the trust that
15:08:11 8 the bankruptcy be dismissed?

15:08:14 9 MR. POLLOCK: Objection; misstates the
15:08:15 10 record, and, again, purely calls for
15:08:19 11 privileged communications.

15:08:21 12 You've asked this repeatedly, and I've
15:08:24 13 asked you repeatedly to stop calling for
15:08:26 14 privileged communication.

15:08:28 15 At this point you're just harassing
15:08:29 16 the witness by asking the same questions
15:08:31 17 again and again. I respectfully ask you,
15:08:33 18 Mr. Bowen, to move on.

15:08:37 19 Q. Is that correct, Mr. Oldner, that you now made
15:08:40 20 the determination that it's no longer in the best
15:08:42 21 interest of the beneficiaries of the trust to seek
15:08:44 22 dismissal of the bankruptcy?

15:08:47 23 MR. POLLOCK: Same objection.

15:08:48 24 A. Your characterization is not correct, sir.

15:09:25 25 Q. Well, how is it not correct?

15:08:57 1 A. The trust at this time is not taking a position
15:09:01 2 one way or the other through the Motion to Dismiss in
15:09:07 3 New York.

15:09:08 4 Q. Well, in your mind, you personally, as the
15:09:10 5 trustee, is it still your position that it's in the
15:09:13 6 best interest of Orly Genger and her descendents as
15:09:17 7 beneficiaries of the trust that the bankruptcy be
15:09:18 8 dismissed?

15:09:20 9 MR. POLLOCK: Mr. Bowen, why do you
15:09:22 10 still keep asking and questioning and
15:09:25 11 questioning again and again? You're just
15:09:27 12 harassing the witness. He has given you
15:09:29 13 his answer. Move along.

15:09:31 14 BY MR. BOWEN:

15:09:31 15 Q. You can answer, Mr. Oldner.

15:09:33 16 MR. POLLOCK: He already gave you his
15:09:34 17 answer.

15:09:34 18 Q. You can answer the question.

15:09:36 19 MR. POLLOCK: He did.

15:09:40 20 A. My position --

15:09:42 21 Q. Go ahead.

15:09:42 22 A. -- right now is that the trust will take no
15:09:46 23 position right now in the Motion to Dismiss in New
15:09:49 24 York.

15:09:56 25 Q. So you have made no conclusion as the trustee

15:09:59 1 or no determination of whether dismissal is in the
15:10:05 2 best interest of the trust beneficiaries; is that
15:10:08 3 right?

15:10:08 4 MR. POLLOCK: Mr. Bowen, you are
15:10:10 5 seeking to elicit privileged communication,
15:10:12 6 but also you purport to represent, you
15:10:17 7 purport to represent a creditor here, and
15:10:20 8 yet you're asking him about what's in the
15:10:24 9 best interest of Orly Genger or her
15:10:27 10 descendents.

15:10:28 11 And I suspect that the reason for this
15:10:30 12 is that you are a law partner with Mr.
15:10:32 13 Herschmann, who -- and I'll try to
15:10:34 14 accurately remember what Mr. Cavaliere
15:10:37 15 said, but, effectively, Mr. Cavaliere
15:10:38 16 indicated that Mr. Herschmann controls or
15:10:42 17 directs the Claims Pursue entity that is
15:10:46 18 seeking to assert claims against
15:10:48 19 Mr. Oldner.

15:10:49 20 None of these questions could possibly
15:10:51 21 have anything to do with what's good for
15:10:55 22 Orly Genger, what's good for Orly Genger's
15:10:57 23 descendents.

15:10:58 24 It has nothing to do with Kasowitz's
15:11:00 25 position as a creditor in this bankruptcy,

15:11:03 1 or as a purported creditor in this
15:11:08 2 bankruptcy.

15:11:09 3 What you're doing is harassing the
15:11:10 4 witness, and I insist that you move on.
15:11:12 5 And, moreover, he has answered the question
15:11:14 6 like a dozen times, and yet you keep asking
15:11:17 7 it again and again.

15:11:17 8 BY MR. BOWEN:

15:11:22 9 Q. Mr. Oldner --

15:11:23 10 MR. CAVALIERE: If I could just
15:11:23 11 interject, Rocco Cavaliere, on behalf of
15:11:24 12 the Chapter 7 Trustee.

15:11:26 13 I disagree with the characterization
15:11:27 14 of Mr. Pollock, as it relates to what I
15:11:30 15 said on a court record on, on May 22nd,
15:11:33 16 which is a transcript as to what I
15:11:36 17 indicated as to who I negotiated with in
15:11:38 18 connection with the, the, the potential
15:11:41 19 sale of certain state causes of action that
15:11:44 20 is the subject of the trustee's motion.
15:11:46 21 Thank you.

15:11:47 22 MR. HERSCHMANN: It's Eric Herschmann.
15:11:47 23 Mr. Pollock, I'm going to give you an
15:11:51 24 opportunity to correct the record. Or if
15:11:51 25 you have a basis for what you just said,

15:11:54 1 outside of what Rocco said or Mr.
15:11:56 2 McMannes's (phonetic) deposition testimony,
15:11:58 3 you should correct it while you have the
15:12:00 4 chance.

15:12:02 5 It is absolutely wrong, but you do
15:12:05 6 these things, and Mr. Dellaportas already
15:12:07 7 got a Rule 11 Notice, and so did Mr. Sahar
15:12:07 8 (phonetic). You do it at your own peril.

15:12:11 9 MR. DELLAPORTAS: Mr. Herschmann, are
15:12:11 10 you representing that Mr. Cavaliere's --

15:12:11 11 MR. HERSCHMANN: You need to --

15:12:11 12 MR. DELLAPORTAS: -- statements to the
15:12:11 13 bankruptcy court were incorrect?

15:12:11 14 MR. HERSCHMANN: -- stop it.

15:12:19 15 MR. DELLAPORTAS: I'd like to know.

15:12:19 16 Mr. Herschmann, you heard what

15:12:21 17 Mr. Cavaliere told the bankruptcy court.

15:12:23 18 We were all there. There's a transcript of
15:12:26 19 it. Are you representing that it's
15:12:27 20 incorrect?

15:12:27 21 MR. HERSCHMANN: Mr. Dellaportas,
15:12:27 22 you're going to have my deposition.

15:12:27 23 MR. DELLAPORTAS: I --

15:12:27 24 MR. HERSCHMANN: You're going to have
15:12:27 25 my deposition.

15:12:32 1 MR. DELLAPORTAS: I got --

15:12:32 2 MR. HERSCHMANN: We're going to talk
15:12:32 3 about all types of issues. Don't worry --

15:12:34 4 MR. DELLAPORTAS: I got you
15:12:35 5 instructing Mr. McMannes not to answer at
15:12:35 6 that deposition --

15:12:36 7 MR. HERSCHMANN: Mr. Dellaportas --

15:12:36 8 COURT REPORTER: I can't hear.

15:12:36 9 MR. DELLAPORTAS: I'd like to know.

15:12:36 10 COURT REPORTER: I can't hear.

15:12:36 11 MR. HERSCHMANN: Mr. Dellaportas --

15:12:47 12 MR. DELLAPORTAS: You started with the
15:12:48 13 Rule 11 sanctions, so I'd like to know are
15:12:48 14 you stating that what Mr. Cavaliere said to
15:12:49 15 Judge Garrity is incorrect? I would
15:12:49 16 like --

15:12:50 17 MR. HERSCHMANN: Always a pleasure
15:12:50 18 talking to you. You're very professional.

15:12:50 19 MR. DELLAPORTAS: What is it, is it
15:12:59 20 true or false? Did Mr. Cavaliere correctly
15:13:00 21 or incorrectly articulate to Judge Garrity
15:13:04 22 at the last --

15:13:07 23 MR. BOWEN: We're proceeding, we're
15:13:07 24 proceeding with the deposition.

15:13:09 25 MR. DELLAPORTAS: Please do not

15:13:11 1 interrupt me, Mr. Bowen.

15:13:12 2 MR. BOWEN: We're proceeding with the
15:13:12 3 deposition.

15:13:12 4 MR. DELLAPORTAS: I did not interrupt
15:13:12 5 you.

15:13:12 6 MR. BOWEN: You can, you can have your
15:13:13 7 fight --

15:13:13 8 MR. DELLAPORTAS: I would like Mr.
15:13:13 9 Herschmann --

15:13:13 10 MR. BOWEN: -- later on somebody
15:13:13 11 else's time.

15:13:14 12 MR. DELLAPORTAS: Mr. Herschmann has
15:13:15 13 been throwing around ridiculous Rule 11
15:13:16 14 allegations, so I'd like him to say,
15:13:20 15 because I don't want to misrepresent
15:13:23 16 anything to the Court --

15:13:23 17 MR. BOWEN: Mr. Dellaportas, now you
15:13:25 18 are being obstructionist --

15:13:26 19 MR. DELLAPORTAS: -- that's not my
15:13:26 20 style.

15:13:26 21 MR. BOWEN: -- and you're preventing
15:13:26 22 this deposition from continuing.

15:13:26 23 MR. DELLAPORTAS: Perhaps Mr.
15:13:26 24 Cavaliere made a mistake. It happens. So
15:13:32 25 tell us, Mr. Herschmann, did Mr. Cavaliere

15:13:35 1 make a mistake in what he told Judge
15:13:37 2 Garrity?

15:13:39 3 MR. BOWEN: Mr. Dellaportas, please
15:13:40 4 desist --

15:13:41 5 MR. DELLAPORTAS: Please do not
15:13:41 6 interrupt me.

15:13:41 7 MR. BOWEN: You have to stop. I'm
15:13:42 8 sorry.

15:13:42 9 MR. DELLAPORTAS: I did not interrupt
15:13:42 10 you.

15:13:42 11 MR. BOWEN: I'm continuing with the
15:13:42 12 examination.

15:13:42 13 BY MR. BOWEN:

15:13:42 14 Q. Mr. Oldner --

15:13:42 15 MR. DELLAPORTAS: Your law partner
15:13:42 16 interrupted your own examination in order
15:13:50 17 to throw around Rule 11 sanctions, and now
15:13:52 18 he's, he's -- so he won't ask a simple
15:13:56 19 question over whether counsel to the
15:13:56 20 Chapter 7 trustee --

15:13:57 21 MR. BOWEN: Mr. Dellaportas, this is
15:13:57 22 inappropriate for a deposition. Please
15:13:57 23 stop.

15:13:59 24 MR. DELLAPORTAS: Well, why didn't you
15:13:59 25 tell your partner --

15:13:59 1 BY MR. BOWEN:

15:13:59 2 Q. Mr. Oldner --

15:13:59 3 MR. DELLAPORTAS: -- Mr. Herschmann to
15:14:04 4 stop when he was threatening people with
15:14:05 5 Rule 11 sanctions for repeating what
15:14:07 6 counsel to the Chapter 7 Trustee told the
15:14:09 7 Court on the record?

15:14:14 8 MR. BOWEN: Mr. Dellaportas, please
15:14:15 9 stop. We are continuing with the
15:14:16 10 examination.

15:14:16 11 BY MR. BOWEN:

15:14:16 12 Q. Mr. Oldner --

15:14:16 13 MR. POLLOCK: Mr. Herschmann invited
15:14:19 14 me to correct the record. The record
15:14:21 15 indicates that Mr. --

15:14:23 16 MR. BOWEN: No, I'm sorry, Mr. -- I'm
15:14:26 17 sorry. I'm drawing a blank on your name.

15:14:27 18 MR. POLLOCK: Pollock.

15:14:28 19 MR. BOWEN: Pollock. Just stop.
15:14:29 20 We're moving on with the --

15:14:31 21 MR. DELLAPORTAS: No, no, no.
15:14:31 22 Mr. Herschmann invited Mr. Pollock to
15:14:34 23 correct the record, so give him an
15:14:34 24 opportunity --

15:14:35 25 MR. BOWEN: No, we're not doing that.

15:14:36 1 MR. DELLAPORTAS: -- to correct the
15:14:36 2 record.

15:14:36 3 MR. BOWEN: You want to correct the
15:14:37 4 record, you can do it when I cede my time
15:14:38 5 and I'm finished --

15:14:39 6 MR. DELLAPORTAS: No, he can do it
15:14:39 7 now. I would like Mr. Pollock to correct
15:14:43 8 the record, if he's going to correct it. I
15:14:45 9 want to know what everyone's position is on
15:14:45 10 this.

15:14:47 11 MR. BOWEN: Well, he can do it later.

15:14:48 12 MR. DELLAPORTAS: Mr. Herschmann
15:14:48 13 invited him.

15:14:49 14 MR. BOWEN: I'm going to continue my
15:14:49 15 examination.

15:14:49 16 MR. DELLAPORTAS: I would like to hear
15:14:50 17 first what Mr. Pollock is going to say.

15:14:53 18 MR. BOWEN: Mr. Dellaportas, you don't
15:14:54 19 get to decide the order of events. I'm in
15:14:56 20 the middle of my examination.

15:14:56 21 MR. DELLAPORTAS: You don't either.

15:14:57 22 MR. BOWEN: Please stop. Please stop.

15:14:59 23 MR. DELLAPORTAS: You don't either.

15:14:59 24 MR. POLLOCK: Mr. Bowen --

15:15:00 25 MR. BOWEN: Yes, I'm conducting the

15:15:00 1 deposition.

15:15:03 2 MR. DELLAPORTAS: But you allowed your
15:15:03 3 law partner, Mr. Herschmann, to
15:15:06 4 interrupt --

15:15:06 5 MR. BOWEN: I don't know --

15:15:06 6 MR. DELLAPORTAS: -- and pose --

15:15:14 7 COURT REPORTER: I can't hear.

15:15:14 8 MR. DELLAPORTAS: I was saying that --

15:15:14 9 MR. BOWEN: You need to stop.

15:15:14 10 MR. DELLAPORTAS: -- Mr. Bowen allowed
15:15:17 11 Mr. Herschmann --

15:15:18 12 MR. BOWEN: You need to just control
15:15:18 13 yourself, please.

15:15:18 14 MR. DELLAPORTAS: -- and pose a
15:15:18 15 question to Mr. Pollock, and now I would
15:15:23 16 like to hear Mr. Pollock's answer.

15:15:26 17 MR. BOWEN: Okay. Thank you. We're
15:15:27 18 going to continue with the questioning.

15:15:29 19 BY MR. BOWEN:

15:15:29 20 Q. Mr. Oldner, I don't know if you can hear me. I
15:15:32 21 don't see you, but the question is --

15:15:35 22 A. Mr. Bowen?

15:15:37 23 Q. Yes.

15:15:39 24 A. Is everybody finished arguing, so it's just you
15:15:42 25 and me now?

15:15:43 1 Q. Yes.

15:15:43 2 MR. POLLOCK: Before you go to Mr. --

15:15:45 3 MR. BOWEN: No, no, we're not doing
15:15:47 4 anything else, Mr. Pollock. I'm just going
15:15:48 5 to ask a question.

15:15:48 6 MR. POLLOCK: Mr. Bowen --

15:15:50 7 MR. DELLAPORTAS: Mr. Bowen --

15:15:50 8 MR. POLLOCK: Mr. Bowen --

15:15:50 9 MR. DELLAPORTAS: -- you can't talk
15:15:50 10 over other attorneys. It's never proper,
15:15:55 11 please don't.

15:15:56 12 MR. BOWEN: Well, there has to be
15:15:56 13 somebody in charge of the deposition.
15:15:57 14 Otherwise, it devolves to this kind of
15:16:00 15 free-for-all, which is not fair to anybody,
15:16:02 16 so let's just continue.

15:16:02 17 MR. POLLOCK: Mr. Bowen --

15:16:03 18 MR. DELLAPORTAS: That's not the way
15:16:03 19 depositions work.

15:16:03 20 MR. POLLOCK: Mr. Bowen --

15:16:03 21 MR. DELLAPORTAS: You speak over
15:16:03 22 everybody.

15:16:07 23 BY MR. BOWEN:

15:16:07 24 Q. Mr. Oldner --

15:16:07 25 COURT REPORTER: Okay. I'm going to

15:16:07 1 control it. We have to talk one at a time,
15:16:07 2 period.

15:16:14 3 MR. POLLOCK: Okay. So what I would
15:16:16 4 suggest, and I agree with what the
15:16:18 5 stenographer said, we should all talk one
15:16:23 6 at a time.

15:16:23 7 Mr. Herschmann leveled a very serious
15:16:25 8 accusation against me and suggested that I
15:16:26 9 check the record.

15:16:27 10 I am now checking the record, and I
15:16:29 11 see that on page 20 of the May 22nd
15:16:32 12 transcript Mr. Cavaliere indicated that he
15:16:35 13 held negotiations primarily with Mr.
15:16:38 14 Herschmann, comma, who is the
15:16:41 15 representative of the entity.

15:16:43 16 My understanding of the entity that
15:16:45 17 they are referring to, and that
15:16:46 18 Mr. Cavaliere was referring to is the
15:16:48 19 Claims Pursue, Inc. entity, and that Mr.
15:16:51 20 Herschmann is the representative of that
15:16:54 21 entity. That is all.

15:16:56 22 MR. CAVALIERE: I --

15:16:58 23 MR. HERSCHMANN: -- of your statement,
15:16:58 24 I'm fine. That's not what you said, but
15:17:01 25 let's move on.

15:17:02 1 MR. CAVALIERE: I think we should move
15:17:04 2 on. The statements Mr. Pollock stated
15:17:07 3 during his deposition were not consistent.

15:17:10 4 The exact words he used were not the
15:17:12 5 words that were just read into the record
15:17:15 6 by Mr. Pollock that were stated on the
15:17:17 7 transcript on May 22nd. I really think we
15:17:20 8 should just move on, and I'd like to do so
15:17:23 9 if it's okay with everyone. Thank you.

15:17:26 10 BY MR. BOWEN:

15:17:27 11 Q. Mr. Oldner, in your capacities as the trustee
15:17:29 12 you don't currently have a view of whether or not
15:17:35 13 dismissal of the bankruptcy is in the best interest
15:17:37 14 of the trust beneficiaries; is that correct?

15:17:42 15 MR. POLLOCK: Objection,
15:17:42 16 mischaracterizes the prior testimony.

15:17:47 17 Q. Is that correct?

15:17:52 18 A. The trust is taking no position at this time on
15:17:58 19 the Motion to Dismiss.

15:18:02 20 Q. But do you have a view? You don't have to tell
15:18:05 21 me what it is, but do you have a view of whether
15:18:08 22 dismissal is in the best interest of the
15:18:10 23 beneficiaries or not?

15:18:11 24 MR. POLLOCK: Mr. Bowen, if you're
15:18:13 25 asking for his testimony with respect to a

15:18:15 1 motion that he has already testified he
15:18:17 2 hasn't completely read, it's inappropriate,
15:18:19 3 and you've asked it again and again.

15:18:25 4 Q. Mr. Oldner, in case you have the same confusion
15:18:28 5 as your lawyer, I'm not asking you to comment on the
15:18:30 6 Motion to Dismiss.

15:18:32 7 I'm asking you whether or not you have a
15:18:34 8 view. You don't have to tell me what it is, but do
15:18:37 9 you have a view whether dismissal is in the best
15:18:41 10 interest of the beneficiaries or not, currently,
15:18:44 11 today?

15:18:46 12 MR. POLLOCK: Same objection.

15:18:47 13 A. Yes, I do.

15:18:50 14 Q. And that view is different than the view you
15:18:51 15 had when you filed the joinder in the dismissal, or
15:18:55 16 the same?

15:18:59 17 MR. POLLOCK: Same objections as
15:19:00 18 previously stated. What you're asking for
15:19:04 19 is his legal analysis, and it's improper.

15:19:09 20 MR. BOWEN: Mr. Pollock, can you just
15:19:10 21 stop and let your witness think for a
15:19:12 22 minute and give us an answer? Please just
15:19:14 23 stop.

15:19:14 24 MR. POLLOCK: I'm objecting again --

15:19:16 25 MR. BOWEN: You already objected.

15:19:17 1 Just stop. Let him think.

15:19:19 2 MR. POLLOCK: Stop asking the same
15:19:20 3 question again and again.

15:19:23 4 THE WITNESS: There are many different
15:19:25 5 components of this, a number of which are
15:19:28 6 legal components, and the only way I know
15:19:34 7 how to honestly answer your question is
15:19:37 8 that, yes, I have opinions, but the trust
15:19:42 9 will take no position in the motion to
15:19:46 10 dismiss at this time.

15:19:48 11 That's being said with full awareness
15:19:52 12 that I have not read the Motion to Dismiss,
15:19:54 13 and that I am not aware of its full
15:19:58 14 content, and I would be speculating as to
15:20:01 15 what it is in general.

15:20:04 16 BY MR. BOWEN:

15:20:06 17 Q. Is it your view that Sagi Genger agrees with
15:20:10 18 the trust that the \$32.3 million belongs to the
15:20:15 19 trust?

15:20:17 20 MR. POLLOCK: Objection to the form.

15:20:21 21 MR. DELLAPORTAS: Speculation.

15:20:25 22 A. I believe that the \$32.3 million belongs to the
15:20:29 23 trust since -- hence why I've filed a lawsuit.
15:20:37 24 That's it.

15:20:39 25 Q. But my question is do you have an understanding

15:20:42 1 that Sagi Genger agrees with that view?

15:21:14 2 A. Do I have an understanding Sagi -- do I have an
15:20:46 3 understanding with Sagi that he agrees with that?

15:20:50 4 Q. Yes.

15:20:51 5 A. No, I do not.

15:20:53 6 MR. DELLAPORTAS: Objection; calls for
15:20:54 7 speculation.

15:20:54 8 Q. Do you have an understanding that Sagi Genger
15:20:56 9 disagrees with that view?

15:20:59 10 MR. DELLAPORTAS: Objection; calls for
15:21:01 11 speculation.

15:21:02 12 MR. POLLOCK: I join in Dellaportas's
15:21:02 13 objection. You're really seeking --

15:21:39 14 THE WITNESS: I'm not --

15:21:09 15 MR. POLLOCK: Hold on. Don't talk
15:21:09 16 over me.

15:21:10 17 THE WITNESS: Sorry.

15:21:11 18 MR. POLLOCK: Are you really seeking
15:21:12 19 his testimony about what Sagi is thinking?
15:21:13 20 Are you deposing Sagi next week?

15:21:18 21 MR. BOWEN: Mr. Pollock, if that's you
15:21:20 22 speaking, I ask you to stop.

15:21:22 23 BY MR. BOWEN:

15:21:22 24 Q. Mr. Oldner, the question is simply do you have
15:21:25 25 an understanding? I'm asking about your

15:21:28 1 understanding. Although Mr. Pollock is confused
15:21:31 2 about that language, let me make it clear.

15:21:33 3 I'm asking your understanding. To your
15:21:34 4 understanding does Sagi Genger disagree with the
15:21:39 5 trust's position that the \$32.3 million belongs to
15:21:44 6 the trust?

15:21:45 7 MR. DELLAPORTAS: Objection; calls for
15:21:46 8 speculation.

15:21:48 9 MR. POLLOCK: I also join in that
15:21:50 10 objection.

15:21:52 11 A. I don't know whether he agrees or disagrees.

15:21:56 12 Q. So you don't know if he's an ally or an adverse
15:22:01 13 party to your position; is that correct?

15:22:03 14 MR. DELLAPORTAS: Objection; misstates
15:22:04 15 the record.

15:22:06 16 MR. POLLOCK: Objection to form, to
15:22:08 17 relevance, to misstates the record. I have
15:22:10 18 a litany of objections.

15:22:14 19 MR. HERSCHMANN: Guys, we have an
15:22:15 20 agreement that an objection for one is an
15:22:18 21 objection for everybody. That's been
15:22:20 22 established already.

15:22:20 23 It's Eric Herschmann. Can we please
15:22:20 24 just keep that rule? So if Mr. Dellaportas
15:22:20 25 objects, it's all preserved. Don't worry.

15:22:26 1 MR. DELLAPORTAS: Mr. Herschmann,
15:22:27 2 that's a rule if the parties have the same
15:22:29 3 objection, but after I objected Mr. Pollock
15:22:32 4 objected on additional grounds beyond those
15:22:35 5 which I did.

15:22:36 6 MR. HERSCHMANN: Right, but --

15:22:36 7 MR. DELLAPORTAS: The ruling as I
15:22:36 8 understand it --

15:23:15 9 MR. BOWEN: Let's finish. Let's
15:23:15 10 finish. Please, everybody stop.

15:22:42 11 MR. DELLAPORTAS: -- one objection on
15:22:42 12 one ground, everybody has that, but if
15:22:43 13 somebody else has an additional ground,
15:22:44 14 then they are going to have to articulate
15:22:44 15 it, just to be --

15:22:45 16 MR. BOWEN: Everybody stop. Everybody
15:22:45 17 stop.

15:22:45 18 MR. DELLAPORTAS: You cannot speak
15:22:45 19 over me. It's really getting out of
15:22:45 20 control.

15:22:45 21 MR. BOWEN: I need to finish --

15:22:45 22 MR. DELLAPORTAS: I have the right --

15:22:45 23 MR. BOWEN: -- this deposition. It's
15:22:45 24 been a long day --

15:22:45 25 MR. DELLAPORTAS: I have the right to

15:22:45 1 answer --

15:22:45 2 MR. BOWEN: Mr. Oldner has been a
15:22:45 3 gentleman throughout --

15:22:45 4 MR. DELLAPORTAS: -- it.

15:22:45 5 MR. BOWEN: Mr. Dellaportas, I'm
15:22:45 6 asking you to stop. It's unfair to Mr.
15:23:00 7 Oldner. Please stop.

15:23:02 8 MR. DELLAPORTAS: Stop talking over
15:23:02 9 me.

15:23:02 10 BY MR. BOWEN:

15:23:02 11 Q. Mr. Oldner, the question was very simply
15:23:05 12 subject to these objections -- they don't have to be
15:23:07 13 restated -- is it the case that you don't -- as the
15:23:08 14 trustee, you don't know whether or not Sagi Genger is
15:23:15 15 an ally or an adverse party to the trust's position
15:23:18 16 as to the \$32.3 million; correct?

15:23:21 17 MR. POLLOCK: Mr. Bowen --

15:23:24 18 MR. DELLAPORTAS: Objection.

15:23:24 19 MR. POLLOCK: And, Mr. Bowen, when you
15:23:25 20 see the stenographer waving her arms around
15:23:26 21 because you're talking over Mr.
15:23:28 22 Dellaportas, I respectfully ask that you
15:23:31 23 respect her and stop trying to speak over
15:23:33 24 Mr. Dellaportas, because it makes it very
15:23:36 25 hard for her to do her job today.

15:23:38 1 She has been valiantly trying, and
15:23:38 2 this is a difficult format for all of us,
15:23:38 3 to do a deposition by Zoom, and when she
15:23:38 4 does wave her arms like that, I ask that
15:23:47 5 you stop speaking over Mr. Dellaportas or
15:23:50 6 everybody else because it makes it very,
15:23:52 7 very challenging for her to get a good
15:23:54 8 record.

15:24:32 9 Q. Mr. Oldner, please answer the question.

15:24:35 10 A. Mr. Bowen --

15:24:02 11 MR. DELLAPORTAS: Object to the form.

15:24:03 12 MR. POLLOCK: I also object.

15:24:04 13 A. Mr. Bowen, I know you've heard this a few
15:24:09 14 times, could you please repeat the question?

15:24:54 15 Q. Certainly. The question is you don't know
15:24:16 16 whether Sagi Genger is an ally or an adverse party to
15:24:20 17 the trust's position that the \$32.3 million belongs
15:24:25 18 to the trust?

15:24:28 19 MR. DELLAPORTAS: Object to form. The
15:24:29 20 question is incapable of meaningful
15:24:31 21 response.

15:24:34 22 MR. POLLOCK: I share in that
15:24:35 23 objection. It's also completely far afield
15:24:38 24 from anything that we're at hand for today.

15:24:49 25 Q. Go ahead, Mr. Oldner.

15:24:50 1 A. Thank you. It is -- the clearest way I can
15:24:56 2 state this is that my belief, my full belief is that
15:25:00 3 the trust is entitled to the full \$32.3 million plus
15:25:07 4 interest, statutory interest, regardless of what
15:25:11 5 anybody else's claims are.

15:25:53 6 Q. And is -- in your view is Sagi Genger assisting
15:25:16 7 the trust in getting the money paid to the trust?

15:25:22 8 MR. DELLAPORTAS: Object to form.

15:25:24 9 MR. POLLOCK: Objection.

15:25:28 10 A. We, obviously -- our attorneys talk. We talk.
15:25:35 11 But that does not mean that I agree with Sagi Genger,
15:25:39 12 or Sagi Genger agrees with me on anything or
15:25:44 13 everything.

15:25:45 14 It means that in some cases we share
15:25:50 15 information. I do not believe that we have an
15:25:52 16 adversarial position. I believe that the \$32 million
15:25:56 17 is entirely the property of the trust. So if that's
15:25:59 18 true, then I don't think Sagi and I have adversarial
15:26:01 19 positions.

15:26:41 20 Q. Okay.

15:26:10 21 A. If I understood that correctly.

15:26:12 22 Q. So your view in that -- well, let me ask it
15:26:14 23 this way. Do you have the view that Dalia Genger
15:26:16 24 also agrees that the \$32.3 million belongs to the
15:26:24 25 trust?

15:26:27 1 MR. DELLAPORTAS: Objection; calls for
15:26:28 2 speculation.

15:26:29 3 MR. POLLOCK: Objection.

15:26:30 4 A. As we discussed earlier, I have never talked to
15:26:32 5 Dalia Genger.

15:26:33 6 Q. So you don't have a view about her position one
15:26:35 7 way or the other; is that correct?

15:26:38 8 MR. POLLOCK: Objection.

15:26:39 9 A. On what she thinks of the \$32 million, no, I
15:26:45 10 don't. I -- at this point in time, I do not.

15:26:53 11 Q. Are you aware of the federal litigation in
15:26:55 12 which both Sagi Genger and Dalia Genger claim that
15:27:00 13 the \$32 million was monetized by Orly Genger?

15:27:03 14 MR. POLLOCK: Mr. Bowen, just two days
15:27:05 15 ago we had a conference with Judge Garrity
15:27:06 16 in which you insisted, tried to insist that
15:27:08 17 we do discovery on Dalia Genger's adversary
15:27:10 18 proceeding. And Mr. Labov had a separate
15:27:14 19 view, and Judge Garrity gave clear
15:27:17 20 direction.

15:27:18 21 I can't understand why you are
15:27:19 22 persisting in the face of Judge Garrity's
15:27:22 23 clear direction. I'm happy to raise the
15:27:25 24 issue with them.

15:27:26 25 I also don't know why you are

15:27:28 1 badgering this witness with what Dalia is
15:27:30 2 thinking or not thinking. He has already
15:27:32 3 testified that he doesn't hasn't talked to
15:27:34 4 her.

15:27:34 5 I respectfully ask that you respect
15:27:37 6 Judge Garrity's clear direction in this
15:27:39 7 matter.

15:27:41 8 Q. You can answer --

15:27:41 9 MR. POLLOCK: I also --

15:27:43 10 Q. You can answer.

15:27:43 11 MR. POLLOCK: Also, Mr. Labov isn't on
15:27:46 12 the line, but I presume that Mr. Labov
15:27:48 13 would have a similar objection to your
15:27:50 14 attempts to flout Judge Garrity's
15:27:53 15 direction.

15:27:58 16 Q. You can answer the question, Mr. Oldner.

15:27:59 17 MR. DELLAPORTAS: This is Dellaportas.

15:27:59 18 Q. Is that your understanding?

15:27:59 19 MR. DELLAPORTAS: I object to the
15:28:01 20 question because it misstates the record.
15:28:02 21 It misstates the positions taken in that
15:28:05 22 other forum, and it omits the actual
15:28:08 23 findings of the court in that other forum,
15:28:10 24 which were affirmed on appeal and are the
15:28:11 25 only things that are relevant.

15:28:14 1 Q. Mr. Oldner, the question was simply are you
15:28:18 2 aware of the federal action in which Mr. Sagi Genger
15:28:22 3 and Dalia Genger have made the claim that Orly Genger
15:28:25 4 monetized the \$32.3 million; are you aware of that?

15:28:30 5 MR. DELLAPORTAS: Objection; misstates
15:28:31 6 the record.

15:28:32 7 Q. Are you aware of that litigation?

15:28:36 8 A. I am not familiar with the litigation.

15:28:39 9 Q. Okay. Are you aware of the fact that Sagi
15:28:43 10 Genger has made the claim that Dalia Genger under a
15:28:48 11 2004 agreement is going to request and demand, I
15:28:54 12 believe, \$26 million to be paid half by Orly and half
15:29:02 13 by Sagi. Are you aware of that?

15:29:05 14 MR. POLLOCK: Mr. Bowen --

15:29:05 15 MR. DELLAPORTAS: Objection; it
15:29:05 16 misstates the record. No such --

15:29:09 17 MR. POLLOCK: And, also, Mr. Bowen,
15:29:10 18 you purport to be --

15:29:13 19 MR. BOWEN: I'm just asking Mr. Oldner
15:29:14 20 if he's aware of that.

15:29:16 21 MR. POLLOCK: And I'm asking --

15:29:17 22 MR. DELLAPORTAS: -- good faith basis
15:29:17 23 for making --

15:29:19 24 MR. BOWEN: I think you're both
15:29:19 25 speaking at the same time. You need to go

15:29:19 1 one at a time.

15:29:23 2 MR. DELLAPORTAS: This is Dellaportas,
15:29:24 3 the questioner lacks a good faith basis to
15:29:27 4 make the claim that he has, because he
15:29:28 5 knows it's not...

15:29:30 6 MR. POLLOCK: Mr. Dellaportas, if I
15:29:32 7 can ask you to keep your volume up. We're
15:29:34 8 having a little bit of challenge hearing
15:29:37 9 you.

15:29:37 10 BY MR. BOWEN:

15:29:40 11 Q. Mr. Oldner, are you aware of that, that claim
15:29:43 12 being made by Sagi Genger and Dalia Genger?

15:29:48 13 MR. POLLOCK: Mr. Bowen, you purport
15:29:50 14 to be representing Kasowitz, a creditor in
15:29:52 15 the bankruptcy.

15:29:54 16 I don't know why you are seeking
15:29:56 17 discovery as to what Dalia claims or Sagi
15:29:59 18 claims.

15:29:59 19 This is far afield, at best, from the
15:30:01 20 pending Motion to Dismiss and appears to be
15:30:04 21 squarely within the colloquy that you had
15:30:07 22 with Mr. Labov two days ago.

15:30:10 23 And now you're asking Mr. Oldner to
15:30:12 24 speculate about something that's in the
15:30:14 25 court record from -- I don't even know when

15:30:17 1 you're talking about.

15:30:18 2 And I don't know why you're doing
15:30:20 3 this, and I'm asking you to make a proffer
15:30:22 4 as to why you are going down this path and
15:30:24 5 how this possibly, a, relates to the Motion
15:30:26 6 to Dismiss, and, b, relates to the
15:30:28 7 Kasowitz's role with respect to the Motion
15:30:31 8 to Dismiss.

15:30:32 9 BY MR. BOWEN:

15:30:34 10 Q. Mr. Oldner, are you aware of that claim being
15:30:37 11 made by either Sagi or Dalia?

15:30:40 12 MR. DELLAPORTAS: Objection; misstates
15:30:41 13 the record.

15:30:43 14 MR. POLLOCK: Objection.

15:30:45 15 A. If I had the claim in front of me, perhaps I
15:30:48 16 would be familiar with it.

15:30:51 17 Q. Well, let's show you the Inter-Creditor
15:30:51 18 Agreement. We'll mark this as Oldner 1, hyphen, 1
15:30:58 19 Exhibit Oldner 1 to the deposition.

15:31:02 20 MR. POLLOCK: Mr. Bowen, pursuant to
15:31:04 21 the email that I sent yesterday, when I
15:31:07 22 emailed you and your colleagues yesterday I
15:31:09 23 indicated that if you would email us the
15:31:11 24 exhibits in advance, we would be able to
15:31:14 25 print them out for Mr. Oldner, or that you

15:31:16 1 could FedEx them for first overnight
15:31:19 2 delivery to this law office, so that we
15:31:24 3 could have them.

15:31:26 4 I now see that Mr. Kurland is doing
15:31:30 5 the screen sharing thing. I still don't
15:31:32 6 know how the stenographer can mark this
15:31:35 7 exhibit.

15:31:48 8 COURT REPORTER: I was emailed a copy,
15:31:48 9 but I was already on my way here. It was
15:31:48 10 like 7:58 this morning. So I didn't -- I
15:31:48 11 couldn't print them. I was already driving
15:31:48 12 here.

15:31:48 13 MR. DELLAPORTAS: So this is Mr.
15:31:48 14 Dellaportas. Yesterday, Mr. Pollock, you
15:31:50 15 weren't there, I don't think, but we
15:31:53 16 established a procedure whereby if there's
15:31:55 17 an exhibit which the reporter doesn't have,
15:31:55 18 the party asking the questions would email
15:32:01 19 it to all counsel.

15:32:02 20 So I would ask that that practice
15:32:04 21 continue to be followed. I followed it.
15:32:06 22 It slowed down my deposition, but it was a
15:32:09 23 courtesy for all attorneys involved.

15:32:11 24 You have everyone's email addresses.
15:32:13 25 Let's forward the --

15:32:15 1 MR. KURLAND: It's been done. Let's
15:32:17 2 proceed. You have it in your email box
15:32:18 3 already.

15:32:21 4 MR. DELLAPORTAS: There it is. Thank
15:32:21 5 you. Please proceed.

15:32:21 6 (Exhibit No. 1 was marked.)

15:32:21 7 BY MR. BOWEN:

15:32:22 8 Q. Mr. Oldner, this was produced by you. The
15:32:25 9 first page has Bates number OGT 0001.

15:32:34 10 A. Okay.

15:32:37 11 MR. POLLOCK: Mr. Bowen --

15:32:38 12 Q. Do you recognize this document?

15:32:40 13 MR. POLLOCK: Hold on. Mr. Bowen, to
15:32:41 14 be clear, you're showing him two-thirds of
15:32:44 15 one page of a nine-page document and asking
15:32:47 16 him if he recognizes it? Is that what
15:32:50 17 you're doing?

15:32:51 18 MR. HERSCHMANN: Mr. Pollock, we dealt
15:32:51 19 with this already. It's Eric Herschmann.
15:32:55 20 Let us go through it. You'll see how we
15:32:57 21 all agreed to do it, and it will be very
15:33:00 22 clear. We have an agreement. This should
15:33:02 23 not be difficult.

15:33:03 24 MR. POLLOCK: I don't know that
15:33:04 25 Mr. Oldner, or Mr. Oldner's counsel, or me

15:33:08 1 have any idea what agreement it is that
15:33:10 2 you're referring to.

15:33:13 3 MR. BOWEN: Well, Mr. Pollock, if you
15:33:16 4 can, you know, just -- you can just print
15:33:20 5 it out, or you can share your screen with
15:33:23 6 the witness. If that's impossible for you,
15:33:25 7 then we can just scroll through it.

15:33:25 8 MR. HERSCHMANN: The witness can see
15:33:25 9 it.

15:33:25 10 BY MR. HERSCHMANN:

15:33:25 11 Q. But looking at the first page, Mr. Oldner, do
15:33:31 12 you recognize the document?

15:33:33 13 A. I do.

15:34:01 14 Q. And you recognize it as the Inter-Creditor
15:33:35 15 Agreement that we signed on behalf of the trust?

15:33:41 16 A. Let's go all of the way through it.

15:33:46 17 Q. All right. Well, you see the date on the first
15:33:48 18 page is June 16th, 2019?

15:34:19 19 A. I do.

15:33:50 20 Q. You know that's a Sunday; correct?

15:34:25 21 A. I do, as a matter of fact.

15:33:54 22 Q. And you were given this agreement on the Friday
15:33:57 23 before hand, which is June the 14th; correct?

15:34:32 24 A. That is correct.

15:34:33 25 Q. All right. Now if you scroll through to the

15:34:03 1 very end, the signature pages, you will see
15:34:05 2 signatures for yourself. Do you recognize your
15:34:14 3 signature?
15:34:15 4 A. That is my signature.
15:34:17 5 Q. And you signed this document on behalf of the
15:34:19 6 Orly Genger 1993 Trust and on behalf of Recovery
15:34:26 7 Effort Inc.; correct?
15:34:56 8 A. I did.
15:34:28 9 Q. And then you sent your signature to Sagi
15:34:30 10 Genger; right? Go to the next page.
15:35:03 11 A. That is correct.
15:34:37 12 MR. POLLOCK: Sorry. Can we see the
15:34:38 13 next page?
15:34:39 14 MR. BOWEN: It's on the screen.
15:34:39 15 BY MR. BOWEN:
15:34:39 16 Q. So the next page has Sagi Genger's signature
15:34:42 17 underneath yours; do you see that?
15:34:45 18 A. Yes.
15:34:45 19 Q. Do you recognize Sagi Genger's signature?
15:34:48 20 A. No. But if you say it is, I believe you.
15:34:53 21 Q. Well, after you sent your signature page to
15:34:56 22 Sagi Genger, he signed it on behalf of himself and on
15:35:00 23 behalf of TPR Investment Associates Inc, and then you
15:35:04 24 signed it again for Recover Effort; is that correct?
15:35:09 25 A. I don't -- that's -- I have no idea. I thought

15:35:12 1 I signed it on the 16th. Okay.

15:35:14 2 Q. Yeah.

15:35:14 3 A. I can tell you that is --

15:35:16 4 Q. If you scroll up a little bit, you'll see that
15:35:18 5 you sign on behalf of the trust.

15:35:18 6 A. That is my signature, okay, for sure.

15:35:21 7 Q. So did you forget to sign on behalf of Recovery
15:35:23 8 Effort?

15:35:58 9 A. I have no --

15:35:26 10 MR. HERSCHMANN: Mike, I think you
15:35:26 11 have to go up a page.

15:35:26 12 A. That's entirely possible.

15:35:26 13 MR. BOWEN: No, this is the page.

15:35:26 14 MR. HERSCHMANN: Oh, Sorry. I'm
15:35:26 15 sorry.

15:35:26 16 BY MR. BOWEN:

15:35:28 17 Q. And, Mr. Oldner, did Sagi Genger call you and
15:35:37 18 say you needed to sign for Recovery Effort too?

15:35:40 19 A. I do not remember. I don't --

15:35:44 20 Q. Did anybody call you and tell you you needed to
15:35:46 21 sign two times?

15:35:48 22 A. Not that I remember, but I do remember sending
15:35:51 23 documents, but...

15:35:56 24 Q. And you sent the document to Sagi; is that
15:35:59 25 correct?

15:35:59 1 A. That's correct.

15:36:01 2 Q. All right. Now if we go back up to the first

15:36:05 3 page -- and, actually, you can go to page two, third

15:36:17 4 paragraph from the top, it reads, Whereas SG,

15:36:20 5 referring to Sagi Genger --

15:37:03 6 A. Okay.

15:36:26 7 Q. -- expects that, upon availability of funds,

15:36:30 8 DG, meaning Dalia Genger, will make demand of Sagi

15:36:35 9 Genger on her full remaining entitlement --

15:37:18 10 A. Okay.

15:36:39 11 Q. -- under Sagi Genger's promise to Dalia Genger,

15:36:43 12 which in turn will trigger Sagi Genger's entitlement

15:36:48 13 from Orly Genger under the Orly Genger Indemnity

15:36:53 14 Claim.

15:36:53 15 Do you see that?

15:36:54 16 A. Yes, sir.

15:36:55 17 Q. And above that paragraph on that same page it

15:37:03 18 reads, quote, Whereas, in the same civil action, by

15:37:08 19 Opinion and Order dated July 27th, 2018, the United

15:37:13 20 States District Court held that the total additional

15:37:17 21 potential liability of Orly Genger to Sagi Genger

15:37:22 22 under her 2004 indemnity to him is \$9.25 million.

15:37:27 23 Do you see that?

15:37:28 24 A. Yes, I do.

15:37:32 25 Q. What was your understanding about the,

15:37:34 1 quote/unquote, availability of funds that is in that
15:37:39 2 first paragraph I read.

15:38:06 3 A. I have no idea what you're talking about.

15:37:43 4 MR. POLLOCK: Mr. Bowen, it appears
15:37:46 5 that you are squarely seeking discovery
15:37:48 6 with respect to the MSM action in which MSM
15:37:52 7 is a party.

15:37:53 8 The Inter-Creditor Agreement is not an
15:37:56 9 issue in the Motion to Dismiss whatsoever.
15:37:58 10 The Motion to Dismiss pertains to Orly's
15:38:01 11 alleged conduct.

15:38:03 12 Orly is not a signatory to this
15:38:05 13 document, has nothing to do with this
15:38:07 14 document.

15:38:07 15 What we are doing now is an analysis
15:38:11 16 of whether or not Orly Genger, sorry, Sagi
15:38:16 17 Genger's Motion to Dismiss should be
15:38:18 18 granted or not granted.

15:38:19 19 The Inter-Creditor Agreement has
15:38:23 20 nothing to do with that. It appears to be
15:38:25 21 either an attempt for you to seek discovery
15:38:28 22 in connection with the entity for which
15:38:29 23 Mr. Mr. Herschmann is the, quote,
15:38:32 24 representative of, of for you to take
15:38:34 25 discovery in connection with the MSM

15:38:36 1 action.

15:38:37 2 I object to this entire line of
15:38:39 3 questioning, and I demand that you move
15:38:41 4 along or cede the chair to Mr.Dellaportas,
15:38:45 5 or Mr. Cavaliere, or whoever else it is who
15:38:48 6 wants to ask questions today.

15:38:50 7 Q. Mr. Oldner, did you understand that the
15:38:52 8 reference to availability of funds was a reference to
15:38:55 9 the \$32.3 million being paid either to Orly Genger or
15:39:03 10 to some party other than the trust?

15:39:09 11 MR. POLLOCK: What paragraph are you
15:39:10 12 on, Mr. Bowen?

15:39:12 13 THE WITNESS: He is on the third one,
15:39:13 14 third one down, Whereas SG expects that,
15:39:13 15 upon availability of funds.

15:39:17 16 Mr. Bowen, may, may I ask you a
15:39:19 17 question from something --

15:39:21 18 MR. POLLOCK: You don't get to ask him
15:39:22 19 questions.

15:39:23 20 THE WITNESS: I'm sorry.

15:39:23 21 MR. POLLOCK: He's not testifying.

15:39:23 22 BY MR. BOWEN:

15:39:25 23 Q. No, you can ask me. What do you want to know?

15:39:27 24 A. I'm sorry. No, we're good. Thank you. What
15:39:30 25 is your, what is your question? I found your

15:39:34 1 paragraph.

15:39:36 2 Q. Did you understand the reference to
15:39:37 3 availability of funds, the reference to the
15:39:40 4 \$32.3 million or any portion of that being paid
15:39:44 5 either to Orly Genger or to some party other than the
15:39:49 6 Orly Genger Trust?

15:39:54 7 MR. POLLOCK: Objection. You're
15:39:57 8 asking a lay witness to construe a
15:40:00 9 complicated legal contract that has nothing
15:40:02 10 to do with anything. I think it's
15:40:03 11 inappropriate. I think you should move on.

15:40:07 12 A. But I can give you a -- go ahead. I'm sorry.

15:40:11 13 MR. HERSCHMANN: He signed the
15:40:12 14 document. That's all.

15:40:14 15 Q. Let's let the witness speak. Go ahead, Mr.
15:40:15 16 Oldner.

15:40:17 17 A. From a layman's point of view, I can tell you
15:40:22 18 what "availability of funds" means to me.

15:40:31 19 Q. Okay.

15:40:34 20 A. If there are any funds.

15:40:40 21 Q. But did you understand that in this context, in
15:40:41 22 signing this agreement, which you did sign, that that
15:40:50 23 reference to that funds was a reference to the same
15:40:53 24 \$32 million that you claim belongs to the trust?

15:40:56 25 MR. POLLOCK: Objection.

15:41:01 1 A. In the -- the way I read this, the way I
15:41:05 2 understood it at the time, the way I understand it
15:41:07 3 now is that there could be funds from other sources,
15:41:10 4 that the \$32.3 million are not the, it's not the only
15:41:16 5 source of funds for either Sagi Genger or Orly
15:41:18 6 Genger.

15:41:21 7 So -- and for Dalia Genger, the source of
15:41:24 8 funds for -- as I understand it, the source of funds
15:41:26 9 for Dalia Genger is Sagi and Orly, and I do not
15:41:31 10 know -- I am -- I would be stunned to find out that
15:41:36 11 the \$32.3 is all of the funds that they have between
15:41:41 12 them. So I think that the \$32.3 million belongs to
15:41:45 13 the trust.

15:41:51 14 Q. Well, having taken that view, what was your
15:42:16 15 thinking in signing this agreement that made the
15:42:20 16 \$32 million that you claim belongs to the trust be
15:42:25 17 payable to Sagi Genger or Robin Rodriguez?

15:42:31 18 MR. POLLOCK: Objection;
15:42:31 19 Misstates the document.

15:42:35 20 MR. DELLAPORTAS: Object to the form.
15:42:35 21 Objection; misstates the record.

15:42:38 22 MR. POLLOCK: And objection misstates
15:42:39 23 the exhibit, or mischaracterizes the
15:42:41 24 exhibit.

15:42:47 25 MR. DELLAPORTAS: Yeah.

15:42:47 1 BY MR. BOWEN:

15:42:48 2 Q. You can answer the question.

15:42:49 3 A. Okay. Please, please show me where the

15:42:51 4 \$32.3 million goes to Robin and Sagi.

15:43:30 5 Q. Well, let me ask it this way first. What is

15:43:01 6 your understanding of what the purpose of this

15:43:04 7 agreement is?

15:43:06 8 A. My understanding of the purpose of this

15:43:07 9 agreement?

15:43:10 10 Q. Yes, sir.

15:43:11 11 A. Is to not add one more layer of litigation to

15:43:14 12 something that is already outrageously litigious

15:43:15 13 between me, and Sagi, and Robin Rodriguez, should

15:43:21 14 anybody collect any funds, to attempt to keep

15:43:24 15 expenses low, to attempt to keep the fees low, to

15:43:30 16 attempt to actually recover the money so that the

15:43:33 17 trust can retire its initial note, can retire any

15:43:37 18 other creditors, and can actually have a balance for

15:43:41 19 Orly Genger and Orly Genger's future generations.

15:43:47 20 Q. So your view of this agreement was you making

15:43:50 21 peace with Sagi Genger and Robin Rodriguez?

15:43:56 22 MR. POLLOCK: Objection;

15:43:56 23 mischaracterizes --

15:58:57 24 A. That's not what I said.

15:43:58 25 MR. POLLOCK: Mr. Oldner, let me talk

15:43:58 1 first.

15:43:59 2 THE WITNESS: I'm sorry.

15:43:59 3 MR. POLLOCK: Objection;

15:44:01 4 mischaracterizes --

15:44:03 5 THE WITNESS: I need a break. What
15:44:04 6 time is it? How long has it been since our
15:44:07 7 last one?

15:44:07 8 MR. POLLOCK: It's been a full hour.

15:44:08 9 THE WITNESS: I am done. I have got
15:44:10 10 to have a break. Everybody knows it.

15:44:13 11 MR. BOWEN: All right. While there is
15:44:13 12 a question pending the witness is taking a
15:44:17 13 break. We're off the record.

15:58:52 14 (Fourteen-minute break)

15:58:52 15 BY MR. BOWEN:

15:58:53 16 Q. Mr. Oldner.

15:58:54 17 A. Can you hear me?

15:59:27 18 Q. Yeah. Yes.

15:59:27 19 A. Thank you.

15:58:58 20 Q. Your understanding of the Inter-Creditor
15:59:03 21 Agreement was that any recovery by the trust of any
15:59:07 22 portion of the \$32 million would be divided up among
15:59:12 23 the parties to the Inter-Creditor Agreement,
15:59:15 24 according to the terms of the Inter-Creditor
15:59:17 25 Agreement; correct?

15:59:19 1 A. Will you post the Inter-Creditor Agreement
15:59:22 2 again while we're talking about it?

15:59:25 3 Q. Yes, yes.

15:59:25 4 A. Thank you. I think that puts me over on the
15:59:27 5 side bar to talk.

15:59:29 6 Q. Yes.

15:59:29 7 A. Okay. There we are.

16:00:12 8 Q. Okay. So if you look at paragraph two on page
15:59:42 9 two, there's a Distribution of Litigation Recovery,
15:59:46 10 and it describes how the money goes first to Robin
15:59:49 11 Rodriguez's company, and to Sagi Genger.

15:59:56 12 And then -- and, secondly, it goes to those
16:00:00 13 two parties again, and, lastly, it goes to recovery.
16:00:03 14 Do you see that?

16:00:34 15 A. I do.

16:00:36 16 Q. Okay. And you understood that; right? You
16:00:08 17 understood that the \$32 million, if the trust won and
16:00:10 18 got all of the \$32 million into the trust, it would
16:00:14 19 have to divide up that money according to this
16:00:17 20 paragraph; correct?

16:00:18 21 A. No, sir, not correct.

16:00:21 22 Q. What's incorrect about that?

16:00:53 23 A. Pretty much all of what you said.

16:00:55 24 Q. Okay. Well, then, if you're saying if the
16:00:28 25 trust wins on the claim, and the \$32 million gets

16:00:31 1 paid into the trust, the trust gets to keep that
16:00:34 2 money?

16:00:35 3 A. Well, those are two opposite ends, but, no, I'm
16:00:38 4 not saying that either. The trust -- if REI wins,
16:00:43 5 the trust will then receive money -- REI will pay its
16:00:48 6 expenses.

16:00:48 7 The trust will then receive the money.
16:00:50 8 Money will be paid out of REI as follows. Number
16:00:55 9 one, it will retire the trust legitimate debts at
16:00:59 10 that time.

16:01:02 11 And, obviously, we use the phrase "Proof of
16:01:06 12 Claim." Obviously there has to be a Proof of Claim
16:01:10 13 on everything if the trust, if the trust wins, just
16:01:13 14 the same as it would be for anybody else.

16:01:17 15 The trust will not be handing money out on
16:01:19 16 the street corner. This is our general agreement.
16:01:23 17 Our general agreement is that the D&K note will be
16:01:31 18 paid off.

16:01:32 19 Q. Well, that would include the payment in
16:01:35 20 paragraph two to MSM; right?

16:01:39 21 A. That would be the D&K note, yes.

16:01:43 22 Q. Right. And then Sagi Genger gets his payment?

16:01:48 23 A. Depending on what that payment is, yes.

16:01:51 24 Q. Well, it's defined in this agreement, and
16:01:53 25 you'll see that, if you look at the "where as"

16:01:56 1 clauses on the top of page two, that the Sagi Genger
16:02:03 2 claims that would get paid out of any money that the
16:02:06 3 trust recovers, are 3.2 million on the 2018 judgment,
16:02:11 4 plus 9.25 million, which is, roughly, 12 million.

16:02:19 5 MR. POLLOCK: Objection;
16:02:19 6 mischaracterizes the document.

16:02:23 7 Q. Do you see that, Mr. Oldner, that that's
16:02:26 8 roughly 12 million?

16:02:28 9 A. I -- are we talking about math?

16:02:33 10 Q. Yes.

16:02:34 11 A. Okay. That looks like approximately somewhere
16:02:40 12 around \$12.46 million.

16:02:45 13 Q. Okay. And then if you go to the first page, on
16:02:47 14 the second "whereas" clause, this talks about the
16:02:50 15 debt the Orly Genger Trust owes to TPR under the
16:02:56 16 note, the D&K note, of being no less than 8 million.
16:02:58 17 Do you see that?

16:03:03 18 A. That would also be the note to MSM, the D&K
16:03:05 19 note, whatever. You know what I'm talking about.

16:03:07 20 Q. Well, the very next, the very next "whereas"
16:03:09 21 clause says that TPR is assigning that \$8 million
16:03:13 22 debt to MSM. Do you see that?

16:03:16 23 A. Yes, okay.

16:03:16 24 Q. So 8 million plus 12 million, approximately, is
16:03:19 25 \$20 million?

16:03:21 1 A. Let's say -- okay. Let's just -- okay, 8 plus
16:03:27 2 12 is 20. I will agree with that.

16:03:29 3 Q. And that's the \$20 million that you had in mind
16:03:32 4 when you said that there was \$20 million of
16:03:33 5 liabilities for the Orly Genger Trust; correct?

16:03:39 6 MR. POLLOCK: Objection; plainly
16:03:41 7 misstates his prior testimony.

16:03:44 8 A. No, that is not what I had in mind.

16:03:47 9 Q. But that's the same number. That just happens
16:03:49 10 to be the same number that you said when you were
16:03:52 11 testifying about what the liabilities are of the Orly
16:03:54 12 Genger Trust. Is that just a coincidence?

16:03:57 13 A. You said that just happens to be. That just
16:03:59 14 happens to be. I told you exactly how I arrived at
16:04:02 15 that number.

16:04:03 16 Q. But you understand that this agreement requires
16:04:05 17 the trust to pay out \$20 million to Sagi Genger and
16:04:12 18 to MS, MSM out of the \$32 million that the trust is
16:04:18 19 claiming belongs to it.

16:04:20 20 MR. POLLOCK: Objection.

16:04:21 21 Q. Is that your understanding of the agreement?

16:04:23 22 MR. POLLOCK: Objection.

16:04:24 23 THE WITNESS: Go ahead. Sorry.

16:04:25 24 MR. POLLOCK: Objection.

16:04:25 1 BY MR. BOWEN:

16:04:26 2 Q. Is that your understanding of the agreement,

16:04:28 3 Mr. Oldner?

16:04:30 4 MR. POLLOCK: Objection.

16:04:33 5 THE WITNESS: Are you through

16:04:33 6 objecting?

16:04:35 7 MR. POLLOCK: Yes.

16:04:35 8 THE WITNESS: Okay.

16:04:35 9 MR. BOWEN:

16:04:35 10 Q. Is that your understanding?

16:04:37 11 A. No.

16:04:37 12 MR. POLLOCK: Objection; asked and

16:04:38 13 answered.

16:05:17 14 Q. I didn't hear the answer. I'm sorry. What was

16:04:40 15 the answer?

16:04:41 16 A. No, that is not my understanding.

16:04:45 17 Q. So your understanding is that the trust could

16:04:47 18 get \$32.3 million awarded to it so that it's

16:04:53 19 adjudicated that that belongs, that money belongs

16:04:58 20 only to the trust, and it would not have to pay

16:05:01 21 \$20 million to Sagi and Robin Rodriguez; is that

16:05:06 22 correct?

16:05:09 23 MR. DELLAPORTAS: Object to form.

16:05:10 24 A. I also object. If you're asking him to

16:05:13 25 interpret a legal contract, I think it's unnecessary

16:05:16 1 and wholly irrelevant to the pending Motion to
16:05:18 2 Dismiss.

16:05:19 3 Q. Is that correct, Mr. Oldner? Is that your
16:05:21 4 understanding, that you would not have to pay, the
16:05:23 5 trust would not have to pay any amount of the
16:05:23 6 \$32.3 million under this Inter-Creditor Agreement; is
16:05:28 7 that correct?

16:05:30 8 MR. DELLAPORTAS: Object.

16:05:30 9 MR. POLLOCK: Mr. Bowen --

16:05:30 10 MR. DELLAPORTAS: Object to form.

16:05:32 11 MR. POLLOCK: -- I object to the
16:05:33 12 hypothetical.

16:05:33 13 MR. DELLAPORTAS: The document speaks
16:05:33 14 for itself.

16:05:35 15 MR. BOWEN: I'm asking for
16:05:35 16 Mr. Oldner's understanding of an agreement
16:05:37 17 that he signed on behalf of the trust that
16:05:40 18 binds the trust, or purports to bind the
16:05:40 19 trust.

16:05:40 20 MR. POLLOCK: You are asking --

16:05:41 21 MR. DELLAPORTAS: That's ambiguous.

16:05:44 22 BY MR. BOWEN:

16:05:44 23 Q. Is that your understanding, Mr. Oldner?

16:05:46 24 MR. POLLOCK: You're asking for --

16:05:47 25 MR. DELLAPORTAS: Objection.

16:05:49 1 MR. POLLOCK: Objection. You're
16:05:50 2 asking for --

16:05:51 3 MR. BOWEN: Can Mr. Oldner just be
16:05:51 4 allowed to answer the questions? I'm
16:05:54 5 concluding my questioning shortly, at least
16:05:56 6 for today, if Mr. Oldner could be allowed
16:05:59 7 to answer the question, please.

16:06:00 8 MR. POLLOCK: And, Mr. Bowen, I would
16:06:02 9 ask for the benefit of our stenographer
16:06:04 10 that you allow me to state my objection
16:06:07 11 without talking over me. I object --

16:06:08 12 MR. BOWEN: I didn't hear you speaking
16:06:09 13 at all, sir. I'm just asking that you
16:06:11 14 state succinctly what your objection is and
16:06:11 15 let the witness speak.

16:06:12 16 MR. POLLOCK: I object to your -- I
16:06:15 17 object to your seeking his speculation
16:06:17 18 about a future event.

16:06:21 19 MR. BOWEN: Okay. That's not what I'm
16:06:23 20 asking.

16:06:23 21 BY MR. BOWEN:

16:06:23 22 Q. Mr. Oldner, I think you understand the
16:06:24 23 question. You can answer it.

16:06:26 24 A. I actually don't understand the question as the
16:06:29 25 best -- but if you would be so kind as to repeat it

16:06:32 1 one more time, I will answer that question.

16:07:20 2 Q. How did you understand what this agreement
16:07:20 3 requires of the trust if the trust is awarded the
16:07:20 4 \$32.3 that it claims belongs to it?

16:07:24 5 MR. POLLOCK: Objection; seeks
16:06:48 6 speculation.

16:06:51 7 A. Number one, I see that at some point in the
16:06:54 8 future. And at some point in the future, parameters
16:07:02 9 on everything not only likely will change, parameters
16:07:07 10 will have changed.

16:07:09 11 So, consequently, I do not -- I look at
16:07:12 12 this note as a guideline and as an indication -- this
16:07:17 13 Inter-Creditor Agreement is an indication that we are
16:07:21 14 not going to fight with each other over the money.

16:07:24 15 It is, it is my anticipation that the trust
16:07:27 16 will be able to satisfy, to pay its expenses, to
16:07:32 17 satisfy its legitimate creditors, and that the trust
16:07:36 18 will have money after that for its beneficiaries, not
16:07:40 19 only Orly Genger, but Orly Genger's descendants going
16:07:44 20 into the future.

16:07:46 21 Q. So your understanding is this agreement doesn't
16:07:48 22 bind the trust to pay any particular amount to
16:07:52 23 anybody else; is that correct?

16:07:55 24 MR. DELLAPORTAS: Objection; misstates
16:07:56 25 the prior testimony.

16:07:58 1 MR. POLLOCK: Objection.

16:07:58 2 Q. Is that correct?

16:08:01 3 A. My understanding, my understanding is that this
16:08:03 4 agreement provides a general outline, but in the real
16:08:07 5 world things change. I do understand --

16:08:10 6 Q. So you expect to renegotiate the agreement?

16:08:14 7 A. Mr. Bowen, I, I would be derelict in my
16:08:21 8 fiduciary responsibility if I don't try to
16:08:23 9 renegotiate some portions.

16:09:01 10 Q. Do you understand that Sagi Genger is adverse
16:08:33 11 to Orly Genger, who is the beneficiary, or one of the
16:08:36 12 beneficiaries or the Orly Genger Trust?

16:08:39 13 MR. DELLAPORTAS: Objection; misstates
16:08:40 14 the record.

16:08:42 15 MR. POLLOCK: Objection.

16:08:43 16 A. Can you tell me what "adverse" means in this
16:08:45 17 case?

16:08:49 18 Q. That, that he's an opponent in the litigation
16:08:51 19 between the two of them.

16:08:54 20 MR. DELLAPORTAS: Same objection.

16:08:57 21 A. I understand that Sagi Genger may be an
16:08:59 22 opponent in the litigation, but I also understand
16:09:02 23 that Sagi Genger would like to settle this litigation
16:09:07 24 and get this behind him.

16:09:11 25 Q. And do you --

16:09:11 1 A. That's what --

16:09:12 2 Q. I'm sorry. I didn't mean to interrupt you. Go
16:09:15 3 ahead.

16:09:15 4 A. I apologize. That's from conversation with
16:09:19 5 Sagi Genger.

16:10:00 6 Q. And you also understand that the trust is
16:09:25 7 adverse to Orly Genger; right?

16:09:31 8 MR. POLLOCK: Objection.

16:09:31 9 A. I don't --

16:09:37 10 Q. Are you aware -- I'll change the question,
16:09:38 11 Mr. Oldner.

16:09:39 12 A. Please.

16:09:39 13 Q. I see you're getting frustrated. Are you
16:09:41 14 aware that --

16:09:41 15 A. I am just trying to understand.

16:09:43 16 Q. -- the trust has sued Orly Genger?

16:09:43 17 A. I'm sorry. I interrupted you. Please tell me
16:09:46 18 again.

16:09:47 19 Q. Are you aware that the trust has sued Orly
16:09:50 20 Genger?

16:09:52 21 A. Yes, I am. The trust --

16:09:55 22 Q. So the trust --

16:09:56 23 A. Whoa, whoa. Pardon me? In, in what capacity?
16:09:58 24 Where?

16:10:00 25 Q. Well, the trust has sued its own beneficiary in

16:10:03 1 the Surrogate's Court in New York.

16:10:08 2 A. Yes. And that suit has been -- it is currently
16:10:10 3 stayed, but that suit has been replaced by the suit
16:10:15 4 in the Southern District of New York in which Orly
16:10:18 5 Genger is not sued.

16:10:20 6 Q. Right. Well, there's an issue about whether
16:10:23 7 that case will remain in the bankruptcy court or
16:10:26 8 whether it will be remanded to the Surrogate's Court.

16:10:30 9 A. I --

16:10:30 10 MR. POLLOCK: Mr. Bowen --

16:10:30 11 Q. What position does the trust have on that?

16:10:30 12 MR. POLLOCK: Yeah, Mr. Bowen, are you
16:10:32 13 asking for his position on the pending
16:10:36 14 remand motion? Because don't -- the
16:10:39 15 pending remand motion is not the pending
16:10:41 16 Motion to Dismiss, and he's not going to
16:10:46 17 give discovery on a pending remand motion
16:10:49 18 with respect to the Surrogate's Court
16:10:50 19 action.

16:11:30 20 Q. Mr. Oldner, I want to understand your
16:10:58 21 understanding of the adversarial relationship that
16:11:00 22 the trust has with its own beneficiary.

16:11:03 23 Is it your understanding that that
16:11:03 24 adversarial lawsuit with Orly Genger should be
16:11:08 25 remanded to the Surrogate's Court, or no?

16:11:11 1 MR. POLLOCK: Mr. Oldner, I will
16:11:12 2 direct you not to answer that question.

16:11:14 3 Mr. Bowen, I will ask you to desist
16:11:19 4 from seeking discovery with respect to a
16:11:21 5 motion to which you are not a party, which
16:11:26 6 does not affect Kasowitz as a creditor, and
16:11:31 7 which is not currently before the court.

16:11:33 8 We have a status conference pending on
16:11:35 9 August 12th on that action, and if you wish
16:11:38 10 to seek discovery, I respectfully ask that
16:11:41 11 you appear at that status conference on
16:11:44 12 August 12th and explain to Judge Garrity
16:11:46 13 why you need discovery on the remand
16:11:49 14 motion. We will not be doing that today.
16:11:50 15 Thank you.

16:11:54 16 MR. HERSCHMANN: Mike, is there --

16:11:54 17 MR. BOWEN: You instructed the witness
16:11:55 18 not to answer.

16:11:55 19 BY MR. BOWEN:

16:11:57 20 Q. Mr. Oldner, are you following that instruction?

16:11:59 21 A. I will take the advice of counsel and not
16:12:02 22 answer that question.

16:12:02 23 MR. HERSCHMANN: Mike, this is Eric.
16:12:02 24 Can I ask for a two-minute break? Do you
16:12:02 25 mind it --

16:12:03 1 MR. BOWEN: One second, one second.

16:12:03 2 BY MR. BOWEN:

16:12:03 3 Q. Why, in your view, Mr. Oldner, is the trust
16:12:10 4 suing its own beneficiary?

16:12:19 5 MR. POLLOCK: Mr. Bowen, are you
16:12:20 6 asking about the Surrogate's Court action
16:12:22 7 that's been removed to federal court, or
16:12:24 8 are you asking about the Motion to Dismiss?

16:12:28 9 MR. BOWEN: I'm asking the trustee,
16:12:29 10 Mr. Oldner, who purports to be the trustee,
16:12:32 11 why, to his understanding, the trustee is
16:12:36 12 suing its own beneficiary in the
16:12:36 13 Surrogate's Court action.

16:12:38 14 MR. POLLOCK: Okay. And, Mr. Bowen, I
16:12:40 15 am ending this line of questioning, and I
16:12:42 16 respectfully ask that you come to the
16:12:44 17 status conference on August 12th and advise
16:12:46 18 the Court as to why Judge Garrity, advise
16:12:50 19 Judge Garrity as to why Kasowitz Benson
16:12:52 20 needs discovery on the Surrogate's Court
16:12:56 21 action.

16:12:56 22 I remind you --

16:12:56 23 BY MR. BOWEN:

16:12:57 24 Q. Mr. Oldner, have you, have you discussed the
16:12:58 25 Surrogate's Court action with Sagi?

16:13:02 1 MR. POLLOCK: Mr. Bowen, I am not
16:13:04 2 doing a deposition today on the Surrogate's
16:13:06 3 Court action that has been removed, nor
16:13:10 4 does Kasowitz Benson have a right to seek
16:13:14 5 discovery.

16:13:14 6 I will also remind you that we are,
16:13:16 7 have a seven-hour deposition today that's
16:13:18 8 supposed to be on the Motion to Dismiss.

16:13:21 9 Move on to the Motion to Dismiss, or
16:13:23 10 cede the chair to Mr. Dellaportas, or
16:13:24 11 Mr. Cavaliere --

16:13:27 12 MR. BOWEN: Are you instructing the
16:13:28 13 witness not to answer the question?

16:13:29 14 MR. POLLOCK: I sure am.

16:13:30 15 BY MR. BOWEN:

16:13:30 16 Q. Mr. Oldner, are you following that instruction?

16:13:33 17 A. I'm following instructions of counsel.

16:13:34 18 Q. Did you --

16:13:35 19 MR. POLLOCK: And I'm asking you to
16:13:36 20 come on August 12th.

16:13:37 21 Q. Did you --

16:13:37 22 MR. POLLOCK: -- and explain to Judge
16:13:38 23 Garrity --

16:13:42 24 MR. BOWEN: I don't need invitations,
16:13:44 25 please. This is a deposition. There's no

16:13:44 1 invitations.

16:13:44 2 BY MR. BOWEN:

16:13:46 3 Q. Mr. Oldner, in that -- under that

16:13:47 4 Inter-Creditor Agreement -- we can put it back up if

16:13:51 5 you want to see it. It's Exhibit 1 to your

16:13:53 6 deposition.

16:13:54 7 A. I do.

16:13:54 8 Q. Does that agreement provide for payment of fees

16:13:55 9 to you, or does that fall under the renegotiation

16:13:59 10 that you intend to pursue?

16:14:02 11 MR. POLLOCK: Objection. Did you ask

16:14:04 12 if there's a payment from you, Mr. Bowen,

16:14:05 13 to Mr. Oldner?

16:14:08 14 Can we get the question read back from

16:14:08 15 the stenographer?

16:14:11 16 MR. BOWEN: I'll restate it. Maybe

16:14:17 17 you didn't hear it correctly.

16:14:17 18 BY MR. BOWEN:

16:14:17 19 Q. Mr. Oldner, the question is does the

16:14:21 20 Inter-Creditor Agreement provide for payments to you

16:14:26 21 in your capacity in operating Recovery Effort?

16:14:32 22 MR. DELLAPORTAS: Objection; the

16:14:33 23 document speaks for itself.

16:14:38 24 A. The Inter-Creditor Agreement is solely an

16:14:41 25 agreement between the parties -- Sagi, Robin

16:14:46 1 Rodriguez, the trust, REI -- not to fight with each
16:14:52 2 other over the money. It has nothing whatsoever to
16:14:56 3 do with my payment.

16:15:29 4 Q. And who, who did you expect was going to pay
16:15:01 5 your fee when the time came to pay?

16:15:05 6 A. Recovery Effort Inc.

16:15:37 7 Q. And where was Recovery Effort Inc. going to get
16:15:11 8 the money from the, whatever's left by, by virtue of
16:15:14 9 the Inter-Creditor Agreement?

16:15:17 10 A. From whatever has been recovered.

16:15:20 11 Q. And would you get the remainder of that money,
16:15:23 12 whatever's left to, that goes to Recovery; is that
16:15:28 13 the idea?

16:15:29 14 MR. POLLOCK: Objection.

16:15:30 15 A. That's ludicrous.

16:15:33 16 Q. Then what's your thinking on that? What's the
16:15:34 17 fee amount you get?

16:15:35 18 A. That's a ludicrous question. I actually take
16:15:38 19 offense to that question. It's the first thing
16:15:41 20 you've said that's offended me.

16:15:41 21 I'm going to get the -- so Robin is going
16:15:42 22 to get paid. Sagi is going to get paid a bunch of
16:15:46 23 money. The trust is going to be left with nothing?
16:15:49 24 No, that's not true at all. Actually, I find that
16:15:52 25 very offensive, that characterization.

16:15:54 1 Q. So what -- how are you going to fix your fee?

16:15:57 2 A. There are, obviously, a number of metrics,
16:16:00 3 based on what I do, based on what it takes to recover
16:16:04 4 the money.

16:16:05 5 There are metrics that are available from
16:16:08 6 multiple different sources, and my fee would be paid,
16:16:11 7 and the guidelines would be established by those
16:16:15 8 metrics.

16:16:16 9 Q. But --

16:16:16 10 A. But we're, we're way off, we're way off on
16:16:17 11 hypotheticals right now, because the trust has
16:16:20 12 absolutely no money, and I am borrowing money through
16:16:23 13 a subsidiary of the trust, a wholly owned corporation
16:16:27 14 to pursue the action to get money back into the
16:16:29 15 trust. Right now my concern is not my fee.

16:16:33 16 Q. But you expect to get a fee?

16:16:37 17 MR. POLLOCK: Objection; we covered
16:16:38 18 this extensively this morning. Mr. --

16:16:40 19 MR. BOWEN: I didn't -- this is my
16:16:41 20 last topic of, of inquiry for today. I'm
16:16:44 21 just trying to ask the witness to give some
16:16:47 22 more insight into what his expectation is
16:16:50 23 of his fees.

16:16:51 24 MR. POLLOCK: You already did this
16:16:52 25 this morning. Let's move on.

16:16:53 1 MR. BOWEN: No, he didn't give us

16:16:53 2 metrics.

16:16:53 3 BY MR. BOWEN:

16:16:53 4 Q. What are the metrics that you're talking about?

16:17:29 5 A. Those -- the metrics that I use, the metrics

16:17:01 6 that will be used to determine that fee will be what

16:17:05 7 is fair and equitable based on what has been done to

16:17:09 8 recover the money.

16:17:11 9 Q. Okay. Are you referring to some industry

16:17:13 10 standard for metrics, or some kind of published

16:17:17 11 handbook about metrics for this kind of recompense?

16:17:20 12 A. I don't think there's a published handbook on

16:17:23 13 the Genger saga.

16:17:25 14 Q. So you just -- you're going to just leave that

16:17:27 15 for future negotiations between you and whom?

16:17:31 16 A. I'm --

16:17:32 17 MR. POLLOCK: Objection;

16:17:32 18 mischaracterizes the testimony.

16:17:36 19 Q. Who would be involved in setting your fee,

16:17:38 20 aside from you, of course?

16:17:41 21 MR. POLLOCK: Mr. Bowen, you covered

16:17:42 22 this this morning. This has nothing to do

16:17:44 23 with the Motion to Dismiss.

16:17:46 24 If any relevance whatsoever, it has to

16:17:48 25 do with the claims of the entity for which

16:17:51 1 Mr. Herschmann is a representative.

16:17:54 2 Mr. -- I'm sorry -- Judge Garrity was
16:17:54 3 absolutely clear that we're not doing
16:18:02 4 discovery on that right now.

16:18:03 5 I ask that you move on and give
16:18:06 6 Mr. Cavaliere a chance, and give Mr.
16:18:08 7 Dellaportas a chance before this seven-hour
16:18:12 8 deposition runs out, and I also don't know
16:18:16 9 if Mr. Geron has questions.

16:18:18 10 Q. Mr. Oldner, who --

16:18:19 11 MR. HERSCHMANN: This is Eric
16:18:19 12 Herschmann. I have questions also.

16:18:21 13 Q. -- is going to be involved in deciding your
16:18:23 14 fee, aside from you?

16:18:24 15 MR. POLLOCK: I'm sorry. Who's
16:18:24 16 speaking now?

16:18:24 17 MR. BOWEN: It's Michael Bowen, and
16:18:24 18 I'm addressing the witness, Mr. Oldner.

16:18:24 19 BY MR. BOWEN:

16:18:24 20 Q. Who aside from you, Mr. Oldner, will be
16:18:24 21 involved in determining your fee, when the time
16:18:26 22 comes?

16:18:39 23 A. When the time comes, I will figure out how to
16:18:42 24 make that decision. Right now is not the time to
16:18:45 25 make that decision.

16:18:49 1 Q. And you don't know who else would be involved
16:18:52 2 in making that decision, aside from yourself?

16:18:53 3 A. I do not.

16:18:54 4 MR. POLLOCK: Objection; asked and
16:18:55 5 answered.

16:18:55 6 MR. BOWEN: At this point in time, I'm
16:18:57 7 going to reserve my right to ask additional
16:19:00 8 questions after we address some issues with
16:19:02 9 the Court.

16:19:03 10 Mr. Oldner, I thank you for your
16:19:06 11 patience today. It was remarkable. And I
16:19:08 12 do have other questions, but we're going to
16:19:10 13 have to need -- we're going to need some
16:19:11 14 rulings from the Court before we can get to
16:19:14 15 those questions, including a determination
16:19:18 16 about the common interest privilege that
16:19:18 17 has been repeatedly asserted both by Mr.
16:19:22 18 Dellaportas and by Mr. Pollock, Pollock.

16:19:27 19 So you may have some time. I think
16:19:31 20 the questioning should go to Mr. Geron or.

16:19:33 21 MR. HERSCHMANN: It's Eric --

16:19:33 22 MR. BOWEN: -- Rocco.

16:19:42 23 MR. HERSCHMANN: It's Eric, if you
16:19:42 24 just let us know how late will Mr. Oldner
16:19:43 25 be staying?

16:19:46 1 MR. POLLOCK: Absolutely. We started
16:19:47 2 at nine a.m. Arkansas time. It is now --
16:19:51 3 seven hours and twenty minutes have
16:19:54 4 elapsed.

16:19:55 5 We had a half an hour lunch break, so,
16:19:58 6 by my count, we're six hours and fifteen
16:20:02 7 minutes into to a seven-hour deposition.

16:20:04 8 If Mr. Geron, Mr. Cavaliere, and Mr.
16:20:07 9 Dellaportas have a few questions that
16:20:09 10 exceed those ten minutes that are still
16:20:13 11 available, if they could let us know now
16:20:16 12 approximately how much more time they need,
16:20:17 13 I'm happy to consider that.

16:20:20 14 MR. HERSCHMANN: Well, it's Eric
16:20:20 15 Herschmann. I have questions also, so I
16:20:20 16 don't know why --

16:20:24 17 MR. POLLOCK: Okay.

16:20:24 18 MR. HERSCHMANN: -- excluded. I would
16:20:24 19 try to, I would try to be quick if you'll
16:20:28 20 let me go now.

16:20:30 21 I'm going to try to limit my topics.
16:20:33 22 I will give you a standing objection to
16:20:35 23 every single question.

16:20:37 24 If you'll let me do it quickly, I
16:20:38 25 think I can be done, at least to my side,

16:20:39 1 subject to going back to Judge Garrity, for
16:20:40 2 ten minutes.

16:20:40 3 MR. POLLOCK: Mr. Herschmann --

16:20:44 4 MR. HERSCHMANN: Is that okay?

16:20:44 5 MR. POLLOCK: -- respectfully, Mr.

16:20:45 6 Cavaliere and Mr. Dellaportas have already
16:20:48 7 piped up that they want to get questions
16:20:50 8 in.

16:20:51 9 You have not served a Notice of
16:20:53 10 Deposition, a cross notice, a subpoena,
16:20:56 11 anything like that, so why don't we give
16:20:58 12 Mr. Cavaliere and Mr. Geron the floor.
16:21:00 13 Also, Mr. Dellaportas piped up.

16:21:01 14 If there's still room within the seven
16:21:08 15 hours at the conclusion, if you have a few
16:21:10 16 minutes of questions, we will respect that.

16:21:12 17 MR. HERSCHMANN: Well, Mr. Pollock, I
16:21:14 18 don't need to give cross notice of a party,
16:21:15 19 but if -- I just want to be clear, because
16:21:17 20 I have to attend something with a
16:21:19 21 government official, so I'm not going to be
16:21:21 22 able to stay on.

16:21:23 23 If you want to give me the
16:21:24 24 professional courtesy, okay. If you want
16:21:24 25 me to go back to Judge Garrity on it and go

16:21:28 1 through this, I can deal with that. I'm
16:21:28 2 just trying to make it simple, and I won't
16:21:29 3 take long.

16:21:30 4 MR. POLLOCK: You're asking for
16:21:31 5 professional courtesy from somebody who you
16:21:34 6 screamed at earlier?

16:21:37 7 MR. HERSCHMANN: It's "yes" or "no."
16:21:37 8 Mr. Pollock, it's a "yes" or "no." You
16:21:38 9 may -- just tell me "yes" or "no." That's
16:21:40 10 all I care about right now.

16:22:10 11 MR. POLLOCK: As far as I'm concerned,
16:21:42 12 Mr. Cavaliere and Mr. Dellaportas asked for
16:21:48 13 time first. If you would like to stick
16:21:49 14 around and ask some questions later, you're
16:21:52 15 welcome.

16:21:52 16 MR. HERSCHMANN: I asked for time
16:21:54 17 before Mr. Dellaportas ever got on the
16:21:54 18 call, so -- I don't want to -- I just
16:21:57 19 want -- I just want an answer.

16:21:58 20 Are you willing to give me the chance
16:21:59 21 to answer {sic} the questions now? It's a
16:22:01 22 yes-or-no answer, please.

16:22:03 23 MR. POLLOCK: I'm willing to give you
16:22:05 24 a chance to ask questions after the others
16:22:06 25 have had their opportunity.

16:22:07 1 MR. HERSCHMANN: Okay. So just so you
16:22:07 2 know that I have to get off and meet with
16:22:11 3 somebody, I will address with Judge Garrity
16:22:14 4 the fact that you wouldn't make the
16:22:15 5 professional courtesy -- since I'm going
16:22:16 6 and allowed to be asking questions, you're
16:22:18 7 just wasting time with the colloquy
16:22:18 8 already. It's just a simple request.

16:22:22 9 MR. POLLOCK: I --

16:22:22 10 MR. HERSCHMANN: It doesn't make any
16:22:23 11 difference to you when I ask the questions.
16:22:25 12 Can I do it now before I'm obligated to
16:22:27 13 leave?

16:22:28 14 And I'll tell Judge Garrity what it
16:22:30 15 was about, but I'm asking you
16:22:30 16 professionally to agree.

16:22:32 17 MR. GERON: Can I, can I interrupt for
16:22:32 18 a second? This is Yann Geron. I -- the
16:22:36 19 natural order of things -- Mr. Oldner, my
16:22:38 20 name is Yann Geron. I am the attorney for
16:22:42 21 Orly Genger.

16:22:43 22 THE WITNESS: Hello, Mr. Geron.

16:22:44 23 MR. GERON: I am the next natural
16:22:45 24 witness, the next natural person to take
16:22:47 25 questions of you.

16:22:48 1 THE WITNESS: Yes.

16:22:49 2 MR. GERON: I would -- I will not -- I
16:22:51 3 have about, maybe, five or ten minutes
16:22:53 4 worth of questions, because Mr. Bowen
16:22:58 5 covered a great deal of ground with you
16:22:59 6 over the many hours.

16:23:00 7 I will ask that the parties agree to
16:23:01 8 allow me to go after Mr. Herschmann. Mr.
16:23:04 9 Herschmann has, has agreed that he's going
16:23:08 10 to do about ten minutes, or as quickly as
16:23:11 11 he can.

16:23:11 12 I will go -- as I said, I am
16:23:13 13 previewing it for the parties, so if you
16:23:15 14 know what I'm talking about, I maybe have
16:23:19 15 10 or 15 questions.

16:23:20 16 I'm going to try my best not to cover
16:23:22 17 any of the areas that were previously
16:23:22 18 covered by Mr. Bowen, and there were a lot
16:23:25 19 of areas.

16:23:26 20 So for the sake of efficiency and to
16:23:28 21 make sure that we do our very best to
16:23:31 22 complete today's deposition today, I would
16:23:33 23 suggest that, that counsel at the
16:23:37 24 deposition agree to the following, to the,
16:23:39 25 to the schedule where Mr. Herschmann goes

16:23:42 1 next. He'll do his very best to go as
16:23:45 2 quickly as possible.

16:23:46 3 I will go after that. Mr. Cavaliere,
16:23:46 4 in the natural order of things, will also
16:23:50 5 do his quick questioning, and then we'll go
16:23:52 6 with, I think, the, the last requestor, who
16:23:57 7 was Mr. Dellaportas.

16:24:03 8 MR. POLLOCK: Mr. Herschmann, do your
16:24:04 9 questions relate to the entity to which you
16:24:06 10 are the representative, or do your
16:24:08 11 questions relate to the pending Motion to
16:24:10 12 Dismiss?

16:24:12 13 MR. HERSCHMANN: Dealing with the
16:24:12 14 Motion to Dismiss. "Representative" means
16:24:12 15 legal representative.

16:24:12 16 I just -- if you'll let me do it,
16:24:14 17 we've already spent five minutes just on
16:24:19 18 asking for this courtesy. Can I just
16:24:20 19 start, please?

16:24:21 20 MR. POLLOCK: Mr. -- if I heard you
16:24:21 21 correctly, and I was having trouble hearing
16:24:21 22 you, these questions relate to the pending
16:24:29 23 Motion to Dismiss, or the entity for which
16:24:29 24 you are the representative?

16:24:32 25 MR. HERSCHMANN: I am dealing with the

16:24:33 1 Motion to Dismiss now. All right? Okay.

16:24:36 2 If you'll let me start, maybe the --
16:24:38 3 it will be relatively quick if we can just
16:24:42 4 get started. Okay?

16:24:46 5 MR. CAVALIERE: I just want to
16:24:47 6 interject here briefly. This is Rocco
16:24:48 7 Cavaliere again. My battery on my iPad is
16:24:54 8 at one percent, so I may get, I may drop
16:24:56 9 off at some point.

16:24:58 10 I have it charged, but I don't think
16:25:00 11 my charge is fast enough to keep up with
16:25:03 12 the data from the video. So I just wanted
16:25:08 13 to provide a little notice of that.

16:25:08 14 We could take a break once you see me
16:25:13 15 drop off, and I think I might need ten
16:25:15 16 minutes for it to charge, but I have no
16:25:18 17 problem with Mr. Herschmann going first.

16:25:21 18 MR. HERSCHMANN: Okay. Thank you.

16:25:21 19 EXAMINATION

16:25:21 20 BY MR. HERSCHMANN:

16:25:21 21 Q. So, Mr. Oldner, my name, my name is Eric
16:25:22 22 Herschmann. Is it accurate, sir, we've never spoken
16:25:27 23 to each other before?

16:25:28 24 A. Pardon me?

16:25:29 25 Q. Is it accurate we've never spoke with each

16:25:32 1 other before?

16:25:33 2 A. Not that I can recall.

16:26:19 3 Q. We've never met each other; is that correct,
16:25:38 4 sir?

16:25:39 5 A. I do not believe we have.

16:25:40 6 Q. And you signed on to an original Motion to
16:25:57 7 Dismiss that was filed in Texas; correct?

16:26:01 8 COURT REPORTER: Mr. Herschmann,
16:26:01 9 you're cutting out real bad. I'm having a
16:26:01 10 hard time hearing you, and I think the
16:26:01 11 witness is too.

16:26:01 12 A. You're, you're real fuzzy, Mr. Herschmann.

16:26:01 13 Q. You joined in a Motion to Dismiss that was
16:26:01 14 filed in Texas; correct?

16:26:02 15 MR. POLLOCK: Objection; asked and
16:26:03 16 answered this morning. Mr. Herschmann, I
16:26:04 17 don't know if you were on the line this
16:26:05 18 morning.

16:26:05 19 MR. HERSCHMANN: I was on, I was on.
16:26:07 20 It's a foundational question, so I'm
16:26:08 21 getting into the topic. All right?

16:26:10 22 BY MR. HERSCHMANN:

16:26:13 23 Q. Mr. Oldner?

16:26:48 24 A. Yes.

16:26:49 25 Q. You joined in a Motion to Dismiss that was

16:26:18 1 filed in Texas; correct?

16:26:19 2 A. Yes.

16:26:21 3 MR. POLLOCK: Objection; asked and

16:26:21 4 answered.

16:26:22 5 A. Okay. Something just happened.

16:26:25 6 Q. Sir --

16:27:01 7 A. Wait, wait. Hold on a second. I'm --

16:27:02 8 MR. POLLOCK: Your screen went dead?

16:27:02 9 A. My screen's dead. Hold on.

16:26:36 10 MR. POLLOCK: That's all right. You

16:26:36 11 don't need --

16:26:36 12 A. I got it, go.

16:26:36 13 MR. POLLOCK: Okay.

16:26:36 14 Q. Did you read the Motion to Dismiss before it

16:26:40 15 was filed?

16:26:42 16 MR. POLLOCK: Objection. Which --

16:26:44 17 MR. HERSCHMANN: I'm only talking

16:26:45 18 about the Motion to Dismiss in Texas right

16:26:47 19 now.

16:26:47 20 MR. POLLOCK: The one that --

16:26:48 21 Q. Did you read --

16:26:49 22 MR. POLLOCK: Mr. Herschmann, I had

16:26:50 23 asked if you're taking discovery on the

16:26:51 24 pending Motion to Dismiss.

16:26:53 25 MR. HERSCHMANN: I am. Mr. Pollock, I

16:26:55 1 need to set a foundation on the topic. I'm
16:26:57 2 not...

16:26:57 3 BY MR. HERSCHMANN:

16:27:00 4 Q. I just want to know if you read the motion
16:27:01 5 before it was filed; yes or no?

16:27:31 6 A. Yes, I did.

16:27:03 7 Q. As the trustee for the trust, did you do
16:27:06 8 anything to determine whether the allegations in that
16:27:10 9 Motion to Dismiss were accurate?

16:27:12 10 MR. POLLOCK: Wait. Mr. Herschmann,
16:27:13 11 are you asking about Sagi Genger's Motion
16:27:16 12 to Dismiss, or are you asking about the
16:27:18 13 joinder of the Orly Genger Trust?

16:27:21 14 MR. HERSCHMANN: The -- when he joined
16:27:22 15 in the Motion to Dismiss in Texas, I want
16:27:25 16 to know if he took any steps to verify
16:27:27 17 whether the allegations were accurate.

16:27:30 18 MR. POLLOCK: And I want --

16:27:30 19 MR. DELLAPORTAS: I just -- sorry.

16:27:30 20 MR. POLLOCK: -- to clarify whether
16:27:34 21 you're referring -- Mr. Dellaportas, let me
16:27:36 22 go.

16:27:37 23 MR. DELLAPORTAS: Sure.

16:27:37 24 MR. POLLOCK: I'd like to clarify
16:27:39 25 whether you're asking whether the

16:27:41 1 allegations in the Motion to Dismiss filed
16:27:44 2 by Sagi Genger were accurate or whether
16:27:47 3 you're asking whether the allegations in
16:27:49 4 the joinder that was filed by the Orly
16:27:51 5 Genger Trust --

16:27:53 6 MR. HERSCHMANN: I'm trying --

16:27:53 7 MR. POLLOCK: -- in support of the
16:27:54 8 Motion to Dismiss were accurate?

16:27:56 9 MR. HERSCHMANN: I'm trying to be
16:27:57 10 particular. When I want to address the
16:27:58 11 joinder, I will address the joinder. So
16:27:58 12 let me see if I can get it; okay?

16:27:58 13 BY MR. BOWEN:

16:27:59 14 Q. Sir, you told us you read the Motion to Dismiss
16:28:06 15 that was filed in Texas. Did you do anything to
16:28:09 16 determine whether or not the allegations, the factual
16:28:11 17 allegations in that motion were accurate?

16:28:15 18 MR. POLLOCK: Mr. Herschmann --

16:28:18 19 MR. DELLAPORTAS: I'm going to object
16:28:19 20 to the extent it's being referred to as a
16:28:19 21 Motion to Dismiss.

16:28:19 22 It was a Motion to Dismiss or
16:28:21 23 Transfer, and the transfer aspect of it was
16:28:22 24 granted.

16:28:29 25 MR. HERSCHMANN: Okay. That's, that's

16:28:29 1 fine.

16:28:29 2 MR. POLLOCK: Mr. Herschmann, I'm
16:28:29 3 going to object on the grounds that you may
16:28:32 4 recall from this morning, which is that
16:28:34 5 Judge Garrity limited the, today's topic to
16:28:37 6 the Motion to Dismiss that is currently
16:28:39 7 subject to the --

16:28:42 8 MR. HERSCHMANN: I --

16:28:42 9 MR. POLLOCK: -- at issue, a. And b
16:28:43 10 is, b is that what you are eliciting is
16:28:49 11 testimony with respect to his privileged
16:28:54 12 communications with counsel about his
16:28:57 13 analysis of somebody else's papers that
16:29:01 14 were filed -- I think what you're asking
16:29:05 15 about is Sagi Genger's allegation and Sagi
16:29:07 16 Genger's Motion to Dismiss that was filed
16:29:09 17 in Texas.

16:29:10 18 If you could please ask him about
16:29:11 19 something that has matter of hand, today
16:29:14 20 would be a lot more efficient.

16:29:16 21 MR. HERSCHMANN: Mr. Pollock, let me
16:29:18 22 do this, because it's obviously not going
16:29:20 23 to be -- you're not going to allow me to
16:29:21 24 ask the questions.

16:29:22 25 I will give you a simple explanation.

16:29:24 1 All I'm asking now is did he do anything to
16:29:26 2 confirm the factual allegations. Some of
16:29:29 3 those same factual allegations are in this
16:29:31 4 current Motion to dismiss.

16:29:33 5 I'm setting a foundation. If you want
16:29:35 6 to do this, then it's obvious we won't
16:29:37 7 finish, and I won't get a chance to ask
16:29:39 8 questions, and I'll just take it up with
16:29:41 9 Judge Garrity. I'm just trying to be
16:29:43 10 accommodating, if you'll let me do it.

16:29:45 11 MR. POLLOCK: So --

16:29:46 12 MR. HERSCHMANN: He understood the
16:29:46 13 question. He said he read the Motion to
16:29:48 14 Dismiss. Mr. Dellaportas objects to the
16:29:48 15 characterizing it that way.

16:29:51 16 I just want to -- if you want to let
16:29:52 17 me, okay. If not, I'll call it a day, and
16:29:56 18 I'll just contact the judge. We'll deal
16:29:57 19 with it. It's fine. I just want to give
16:29:57 20 you the choice. I don't want to burden
16:30:02 21 Mr. Oldner.

16:30:02 22 MR. POLLOCK: Mr. Herschmann, if you
16:30:03 23 can get to a place where you have better
16:30:06 24 cell phone reception for you, I think it
16:30:08 25 would be helpful, a, or a landline for

16:30:10 1 respect for this deposition, and especially
16:30:11 2 for the stenographer, is a.

16:30:12 3 But, b, is if you could just be very
16:30:18 4 clear when you're asking the question, both
16:30:20 5 clear in signal of a cell phone, and also
16:30:22 6 clear in your terminology, whose Motion to
16:30:25 7 Dismiss you're referring to and whose
16:30:27 8 allegations.

16:30:28 9 I keep hearing "his motion," but if
16:30:30 10 you can clarify who you're talking about, I
16:30:34 11 think that would help everybody, including
16:30:36 12 the witness.

16:30:38 13 BY MR. HERSCHMANN:

16:30:38 14 Q. Okay. Let me see if I can do that.

16:30:39 15 Mr. Oldner, do you recall that there was a Motion to
16:30:43 16 Dismiss the bankruptcy filed in Texas; yes or no?

16:31:15 17 A. Yes, sir.

16:30:48 18 Q. Did you read that Motion to Dismiss at some
16:30:50 19 point?

16:30:51 20 MR. POLLOCK: Objection. Again, Mr.
16:30:52 21 Herschmann, if you can be more clear. Are
16:30:54 22 you asking him if he read Sagi Genger's
16:30:56 23 Motion to Dismiss or, in the alternative,
16:30:57 24 the transfer, or are you asking him did he
16:31:01 25 read the joinder of the Orly Genger Trust

16:31:04 1 and the reasons stated therein?

16:31:07 2 MR. HERSCHMANN: Mr. Pollock, I just
16:31:09 3 set the foundation. The witness understood
16:31:10 4 it. You're being obstructionist.

16:31:12 5 If you want to do it this way, I'm
16:31:14 6 more than happy to say, Fine, you've now
16:31:17 7 made the record the way you want. We'll go
16:31:19 8 to the Court.

16:31:20 9 The witness didn't indicate one
16:31:21 10 concern about the question. Please, just,
16:31:23 11 you have -- you have a standing objection
16:31:26 12 to every single question I ask, on all
16:31:28 13 bases.

16:31:29 14 You don't have to worry about it.
16:31:30 15 It's preserved forever. If you want the
16:31:33 16 witness to finish, it can't get any better.

16:31:36 17 BY MR. HERSCHMANN:

16:31:36 18 Q. So, Mr. Oldner, after you read the Motion to
16:31:37 19 Dismiss that was filed in Texas, what steps did you
16:31:41 20 do, take, if any, to verify whether or not the
16:31:45 21 factual allegations were correct?

16:31:47 22 MR. POLLOCK: Mr. Herschmann, I am
16:31:49 23 directing, to the extent that you are
16:31:51 24 asking -- and I don't understand your
16:31:54 25 refusal to clarify which motion it is that

16:31:57 1 you're talking about -- to the extent that
16:31:59 2 you are asking him what steps did he take
16:32:03 3 to verify the allegations in the Sagi
16:32:06 4 Genger Motion to Dismiss, which were
16:32:09 5 heavily redacted, I would --

16:32:12 6 MR. HERSCHMANN: Mr. --

16:32:12 7 MR. POLLOCK: -- direct the witness
16:32:13 8 not to testify with respect to his
16:32:15 9 privileged communications with counsel at
16:32:17 10 the time.

16:32:20 11 MR. HERSCHMANN: Mr. Pollock, let me
16:32:21 12 do this, because I don't want to waste any
16:32:23 13 more time, and I'll make it -- I'll take it
16:32:25 14 a step back.

16:32:25 15 BY MR. HERSCHMANN:

16:32:26 16 Q. Mr. Oldner, was Jay Ong your attorney in Texas?

16:32:57 17 A. He was.

16:32:31 18 Q. Do you know that Jay Ong got an unredacted copy
16:32:33 19 of the Motion to Dismiss in Texas; are you aware of
16:32:37 20 that fact?

16:33:04 21 A. I am -- I do not know that at all.

16:33:07 22 Q. Okay. At some point did you Read the Motion to
16:32:44 23 Dismiss, and take any steps to verify the accuracy of
16:32:50 24 the allegations before you joined in it?

16:32:53 25 MR. POLLOCK: Objection; asked and

16:32:53 1 answered. It would be helpful if you would
16:32:56 2 clarify which motion you are referring to,
16:32:58 3 a, and, b, to the extent that you're
16:33:00 4 calling, trying to elicit privileged
16:33:03 5 testimony, I will direct the witness not to
16:33:05 6 answer with respect to his privileged
16:33:07 7 communications.

16:33:09 8 MR. HERSCHMANN: Mr. Pollock, let me
16:33:10 9 do this.

16:33:12 10 MR. POLLOCK: Yes.

16:33:12 11 MR. HERSCHMANN: I have given you
16:33:13 12 every opportunity not to interrupt it. You
16:33:15 13 have given me no choice but to go to Judge
16:33:18 14 Garrity with it.

16:33:19 15 I will go to Judge Garrity and tell
16:33:21 16 him that almost on every single question,
16:33:23 17 okay, you gave a speaking objection.

16:33:23 18 So based on that conduct, right, if
16:33:28 19 you want to let me try to ask it, I'll
16:33:30 20 leave that topic now, based on your inter,
16:33:32 21 interjecting speaking objections
16:33:34 22 continuously, and let me move on, right,
16:33:36 23 and I'm going to reserve that time.

16:33:38 24 BY MR. HERSCHMANN:

16:33:38 25 Q. Mr. Oldner, when you talk about the

16:33:42 1 beneficiaries of the Orly Genger Trust, tell me
16:33:45 2 everything you know about Orly Genger's daughter.

16:33:51 3 A. About what?

16:33:54 4 MR. DELLAPORTAS: You broke up at the
16:33:54 5 end there, Eric.

16:33:59 6 Q. I'm sorry. Sir --

16:33:59 7 MR. DELLAPORTAS: It's --

16:33:59 8 MR. HERSCHMANN: I'm sorry. Let me
16:33:59 9 ask it again.

16:33:59 10 BY MR. HERSCHMANN:

16:33:59 11 Q. Sir, you seem to be distinguishing between Orly
16:34:04 12 Genger as a beneficiary and her daughter as a
16:34:09 13 beneficiary of the trust. Did I hear that correctly,
16:34:12 14 when you were testifying and responding to Mr.
16:34:14 15 Bowen's questions?

16:34:48 16 A. It is my interpretation of the trust document,
16:34:20 17 with the assistance of attorneys, that the main
16:34:26 18 beneficiary of, the main beneficiaries of the trust
16:34:30 19 are future generations.

16:34:59 20 Q. Sir, do you know what a primary beneficiary is,
16:34:36 21 and then a contingent beneficiary?

16:34:37 22 MR. POLLOCK: Objection, to the extent
16:34:40 23 that that seeks legal characterizations.

16:34:42 24 Q. I don't want any legal definition from you at
16:34:45 25 all, sir. And I'm not asking for your legal opinion.

16:34:48 1 I never will.

16:34:49 2 I want to understand as the trustee, you
16:34:50 3 understand the difference between a primary
16:34:52 4 beneficiary and a contingent beneficiary?

16:34:57 5 MR. DELLAPORTAS: Objection;
16:34:57 6 relevance.

16:34:59 7 MR. POLLOCK: Yeah, Mr. Herschmann, I
16:35:01 8 remind you that before we started this I
16:35:03 9 asked if you were seeking discovery with
16:35:05 10 respect --

16:35:06 11 MR. HERSCHMANN: I'm not --

16:35:06 12 MR. POLLOCK: -- to the Motion to
16:35:06 13 Dismiss or with respect to the entity for
16:35:09 14 which you, apparently, the representative.

16:35:12 15 If you can proffer the relevance of
16:35:15 16 this to the pending Motion to Dismiss, I
16:35:18 17 would appreciate it, and I think it would
16:35:20 18 help us all to move along swiftly.

16:35:23 19 MR. HERSCHMANN: Mr. Oldner, we're
16:35:23 20 going to deal -- I'm sorry. Mr. Oldner,
16:35:24 21 I'm sorry about this.

16:35:25 22 Your lawyer will continue to give
16:35:27 23 speaking objections no matter what I say,
16:35:29 24 and no matter the fact that I gave him a
16:35:31 25 continuing objection.

16:35:34 1 Is it your intention, Mr. Pollock, to
16:35:35 2 continue this every single time? Because
16:35:37 3 I'm going to -- I'll try to move on, and
16:35:39 4 that will be another topic I have to
16:35:41 5 address with the Court.

16:35:42 6 BY MR. HERSCHMANN:

16:35:42 7 Q. Mr. Oldner, you said that you take it very
16:35:45 8 seriously, were your exact words, when you bring
16:35:48 9 claims against anyone. Do you remember that
16:35:50 10 testimony?

16:35:51 11 MR. DELLAPORTAS: Mr. Herschmann, this
16:35:52 12 is Mr. Dellaportas. This is very unfair.
16:35:52 13 You're timing out the rest of us. You
16:35:54 14 don't -- you --

16:35:56 15 MR. HERSCHMANN: So, John, I don't
16:35:56 16 want to argue --

16:35:57 17 MR. DELLAPORTAS: You are --

16:35:57 18 MR. HERSCHMANN: I don't want to
16:35:57 19 argue --

16:36:02 20 MR. DELLAPORTAS: You are timing out
16:36:02 21 the rest --

16:36:02 22 MR. POLLOCK: Stop.

16:36:02 23 COURT REPORTER: I can't hear anyone.

16:36:02 24 MR. DELLAPORTAS: We do have relevant
16:36:04 25 questions. You don't have relevant

16:36:05 1 questions. If you want to ask about your
16:36:08 2 daughter, and whether you think he's a good
16:36:08 3 thing, take it up in some other forum.

16:36:10 4 MR. BOWEN: Mr. Dellaportas, it is
16:36:11 5 unprofessional what you're doing. It is --

16:36:11 6 MR. DELLAPORTAS: It is completely
16:36:11 7 inappropriate for you to be taking our time
16:36:11 8 when we have relevant questions, with your
16:36:11 9 irrelevant questions, which you have a
16:36:11 10 personal interest, apparently, that you
16:36:11 11 feel this man is not a good trustee for
16:36:11 12 your daughter.

16:36:12 13 MR. HERSCHMANN: Mr. Dellaportas,
16:36:12 14 please stop.

16:36:12 15 BY MR. HERSCHMANN:

16:36:12 16 Q. Mr. Oldner, let me ask you a question.

16:36:13 17 MR. DELLAPORTAS: You have other
16:36:13 18 venues to address that.

16:36:13 19 MR. HERSCHMANN: Mr. Dellaportas,
16:36:13 20 please stop.

16:37:09 21 MR. DELLAPORTAS: Stop timing us out.

16:37:09 22 MR. HERSCHMANN: Your -- Mr.
16:37:09 23 Dellaportas, please stop.

16:37:09 24 MR. DELLAPORTAS: Do you have any
16:37:09 25 relevant questions?

16:37:09 1 MR. HERSCHMANN: Mr. Dellaportas, we
16:36:29 2 will address it with the Court.

16:36:39 3 BY MR. HERSCHMANN:

16:36:40 4 Q. Mr. Oldner, can you please, if you can listen
16:36:42 5 for a moment, please.

16:36:43 6 MR. POLLOCK: Mr. Herschmann, I will
16:36:44 7 respectfully ask --

16:36:46 8 MR. HERSCHMANN: Mr. Pollock, are you
16:36:46 9 going to -- I've never literally in 35,
16:36:49 10 almost, years of practicing law, I don't
16:36:52 11 think I've ever seen anything like this.

16:36:54 12 MR. DELLAPORTAS: What about yesterday
16:36:54 13 when you instructed your wife --

16:36:54 14 MR. HERSCHMANN: Other than --

16:36:54 15 MR. DELLAPORTAS: Not to answer my
16:36:54 16 questions?

16:37:06 17 MR. HERSCHMANN: Mr. Dellaportas --

16:37:06 18 COURT REPORTER: I can't hear y'all.

16:37:06 19 THE WITNESS: Please, please.

16:37:06 20 COURT REPORTER: I can't hear either
16:37:06 21 one of you.

16:37:06 22 MR. HERSCHMANN: Mr. Oldner --

16:37:06 23 MR. DELLAPORTAS: In 35 years Mr.

16:37:07 24 Herschmann has never seen anything like it,
16:37:08 25 except yesterday when he disrupted my

16:37:09 1 deposition of his wife.

16:37:10 2 MR. HERSCHMANN: Oh, my God.

16:37:10 3 MR. POLLOCK: Mr. Herschmann, I will
16:37:12 4 ask you respectfully on behalf of the
16:37:13 5 stenographer to cease speaking over me and
16:37:17 6 to cease speaking over Mr. Dellaportas so
16:37:18 7 that we can get an accurate record to --

16:37:24 8 MR. HERSCHMANN: All right.

16:37:24 9 MR. POLLOCK: -- and move along. I
16:37:25 10 don't understand why you're taking up time
16:37:29 11 asking questions about the infant
16:37:29 12 beneficiary of the trust.

16:37:36 13 MR. HERSCHMANN: Because your client
16:37:38 14 addressed it. Your client distinguished it
16:37:41 15 beforehand.

16:37:41 16 But I, I don't want to fight any
16:37:42 17 longer with you. I just want to try to
16:37:44 18 move on. That's another topic, and we'll
16:37:45 19 move on.

16:37:46 20 MR. POLLOCK: Great.

16:37:46 21 BY MR. HERSCHMANN:

16:37:46 22 Q. Mr. Oldner, were you aware of the fact when you
16:37:50 23 met with Sagi Genger and he asked you to be trustee
16:37:53 24 that he was involved in lawsuits with the beneficiary
16:37:56 25 of the trust?

16:38:01 1 A. I knew he had been involved in lawsuits. I
16:38:05 2 knew he won a judgment against the beneficiary of the
16:38:08 3 trust.

16:38:09 4 Q. Were you aware that there were certain findings
16:38:13 5 about Sagi Genger in relationship to a fraud case
16:38:17 6 when you met with him when he asked you to be
16:38:21 7 trustee?

16:38:21 8 A. Pardon me?

16:38:23 9 Q. Sure. Did Sagi Genger --

16:38:23 10 MR. POLLOCK: Mr. Herschmann, can you
16:38:25 11 get to a better cell phone location?

16:38:27 12 A. I, I really can't --

16:38:27 13 Q. No --

16:38:27 14 A. -- I heard half of what you said.

16:38:29 15 Q. I will try to speak more clearly.

16:38:29 16 A. You're speaking very clearly. You're cell
16:38:36 17 phone is cutting out.

16:38:36 18 Q. I'm not on a cell phone. Mr. Oldner, did Sagi
16:38:41 19 Genger tell you that he was in various lawsuits with
16:38:44 20 his sister, the beneficiary of the Orly Genger Trust,
16:38:48 21 when he asked you to become trustee?

16:38:52 22 A. I believe that I was aware that they were, had
16:38:55 23 been off and on in lawsuits. Obviously, to keep up
16:39:01 24 with the Genger saga is difficult. I knew there were
16:39:04 25 multiple lawsuits between multiple parties at

16:39:08 1 multiple times.

16:39:09 2 MR. POLLOCK: And you're -- I object
16:39:10 3 that your question mischaracterizes the
16:39:13 4 prior testimony.

16:39:16 5 Q. Mr. Oldner, do you know that the lawsuits have
16:39:21 6 been going on, and some of them have continued for
16:39:23 7 years, and years, and years? Are you aware of that
16:39:26 8 fact?

16:39:27 9 A. Yes, sir.

16:39:27 10 MR. POLLOCK: Objection to form.

16:39:28 11 Q. Did you, did you seek -- did you talk to anyone
16:39:32 12 other than Sagi Genger when he brought you the
16:39:37 13 document asking you to become trustee?

16:39:40 14 MR. POLLOCK: I object to the extent
16:39:41 15 that this question -- it was both asked and
16:39:43 16 answered this morning. Now you're just
16:39:46 17 harassing the witness, a, and, b, is I
16:39:49 18 object to the extent that it seeks to
16:39:51 19 elicit privileged communications.

16:39:54 20 MR. HERSCHMANN: I'm not asking -- I
16:39:55 21 don't know how much clearer I can make it
16:39:56 22 to you, Mr. Pollock. I don't want any
16:39:59 23 conversations he had with any lawyers.

16:40:01 24 BY MR. HERSCHMANN:

16:40:02 25 Q. So I want -- you told us earlier Mr. Sagi

16:40:07 1 Genger came to you with two pieces of paper. One was
16:40:11 2 signed by Dalia Genger already, right, appointing,
16:40:14 3 asking to appoint you as trustee; correct?

16:40:16 4 MR. POLLOCK: Objection; asked and
16:40:17 5 answered.

16:40:54 6 A. Yes.

16:40:54 7 Q. Okay. And, sir, you don't know if that was
16:40:22 8 Dalia Genger's signature, because you never spoke
16:40:25 9 with her; right?

16:40:28 10 A. That's a confusing non sequitur to me. I
16:40:37 11 wouldn't recognize it as being her signature if I had
16:40:41 12 spoken to her. I --

16:40:43 13 Q. Do you --

16:40:43 14 A. -- my assumption is that is Dalia's signature.
16:40:43 15 It has not been objected to by anybody saying that
16:40:45 16 it's not. This is the first I've heard that
16:40:49 17 suggested.

16:41:20 18 Q. Sir, was Dalia Genger in a medical facility, do
16:40:53 19 you know, when she supposedly signed this document?

16:41:29 20 A. I have no idea.

16:41:31 21 Q. Did anyone ever tell you that Dalia Genger has
16:41:02 22 certain mental issues that may inhibit her ability to
16:41:07 23 function under certain circumstances?

16:41:09 24 MR. DELLAPORTAS: Object to form.

16:41:09 25 A. No one has ever discussed Dalia Genger's mental

16:41:11 1 issues with me at all.

16:41:13 2 Q. Okay. So when the time -- at the time you

16:41:14 3 signed the document which you accepted to be trustee,

16:41:19 4 right, and you released Dalia Genger of any actions

16:41:24 5 that she took, tell us all of the actions that you

16:41:28 6 understood she took while she was trustee.

16:41:31 7 MR. DELLAPORTAS: Objection. This is

16:41:31 8 what you --

16:41:31 9 MR. POLLOCK: Objection.

16:41:31 10 MR. DELLAPORTAS: -- Mr. Herschmann?

16:41:31 11 Some of us have relevant questions here.

16:41:39 12 MR. POLLOCK: Yes, Mr. Herschmann, her

16:41:39 13 actions --

16:41:39 14 Q. You can answer the question, Mr. Oldner.

16:41:39 15 MR. POLLOCK: -- her actions as

16:41:41 16 trustee --

16:41:44 17 MR. DELLAPORTAS: You represent, you

16:41:44 18 represented you had relevant questions to

16:41:44 19 the motion.

16:41:48 20 MR. HERSCHMANN: Mr. Dellaportas, it's

16:41:48 21 directly relevant. You're wasting our

16:41:48 22 time.

16:41:48 23 BY MR. HERSCHMANN:

16:41:48 24 Q. Mr. Oldner, please answer the question.

16:41:54 25 MR. DELLAPORTAS: You want him to

16:41:54 1 recite ten years of what Dalia Genger did
16:41:56 2 as, as trustee? That's relevant to the
16:41:58 3 Motion to Dismiss? Explain how this is
16:42:01 4 relevant to the Motion to Dismiss.

16:42:02 5 MR. HERSCHMANN: Mr. Dellaportas,
16:42:04 6 you're wasting time.

16:42:06 7 MR. DELLAPORTAS: -- the rest of my
16:42:06 8 questions.

16:42:06 9 BY MR. HERSCHMANN:

16:42:10 10 Q. Mr. Oldner, please answer the question.

16:42:10 11 MR. DELLAPORTAS: You're wasting time.
16:42:10 12 explain --

16:42:10 13 BY MR. HERSCHMANN:

16:42:10 14 Q. Mr. Oldner, please answer the question.

16:42:10 15 MR. DELLAPORTAS: I'd like to ask my
16:42:10 16 questions.

16:42:10 17 MR. HERSCHMANN: John, you should have
16:42:12 18 come earlier in the day.

16:42:13 19 BY MR. HERSCHMANN:

16:42:13 20 Q. Mr. Oldner, please answer the question.

16:42:13 21 MR. DELLAPORTAS: I'm sorry. I --
16:42:14 22 would -- broken and allowed me to ask the
16:42:18 23 questions earlier in the day? I kind of
16:42:19 24 doubt it.

16:42:19 1 BY MR. HERSCHMANN:

16:42:20 2 Q. Mr. Oldner, can you please answer the question?

16:42:22 3 MR. POLLOCK: Mr. Herschmann, can you
16:42:24 4 please make a proffer --

16:42:25 5 MR. HERSCHMANN: I --

16:42:25 6 MR. POLLOCK: -- as to how a
16:42:27 7 recitation of ten years of Dalia Genger's
16:42:30 8 service as trustee --

16:42:32 9 MR. HERSCHMANN: I --

16:42:32 10 MR. POLLOCK: -- is
16:42:32 11 possibly relevant --

16:42:34 12 MR. HERSCHMANN: I will --

16:42:34 13 MR. POLLOCK: Please don't speak over
16:42:34 14 me, so we can make a good --

16:42:36 15 MR. HERSCHMANN: Okay.

16:42:36 16 MR. POLLOCK: -- a good transcript?

16:42:38 17 MR. HERSCHMANN: Mr. Pollock, let me
16:42:39 18 see if I can do it differently, because,
16:42:39 19 obviously, we're going to the judge.

16:42:41 20 BY MR. HERSCHMANN:

16:42:42 21 Q. Did you take any steps whatsoever to determine
16:42:46 22 whether it was appropriate to release Dalia Genger
16:42:48 23 from any liability while she was trustee; yes or no?

16:42:55 24 MR. POLLOCK: Mr. Herschmann, that
16:42:56 25 question was already asked. I, I will

16:42:59 1 object to any further questioning that, a,
16:43:02 2 that was already asked. Now you're just
16:43:04 3 harassing and badgering the witness.

16:43:06 4 We did go to the judge, and the judge
16:43:08 5 set confines of this deposition, and we had
16:43:12 6 a clear direction. The judge said, Take a
16:43:14 7 deposition only on the Motion to Dismiss.

16:43:18 8 Whether Dalia's, the actions that
16:43:21 9 Dalia took over the course of ten years and
16:43:24 10 any investigation that Mr. Oldner did is
16:43:28 11 only pertinent, if anything, to the claims
16:43:32 12 that were sought to be assigned to the
16:43:35 13 entity for which you are a representative.

16:43:38 14 And it is telling that you are now
16:43:40 15 seeking discovery in connection with those
16:43:43 16 potential claims.

16:43:44 17 This is precisely what Mr. -- excuse
16:43:48 18 me -- what Judge Garrity indicated was not
16:43:52 19 relevant to the Motion to Dismiss.

16:43:53 20 MR. HERSCHMANN: Okay.

16:43:56 21 MR. POLLOCK: We talked about exactly
16:43:57 22 this.

16:43:58 23 MR. HERSCHMANN: Mr. Pollock --

16:43:58 24 MR. POLLOCK: I don't know if you
16:43:59 25 were -- and I will direct you to move along

16:44:02 1 to the subject at hand, and I will direct
16:44:05 2 the witness not to answer any further
16:44:07 3 questions.

16:44:08 4 If, indeed, those claims are sold to
16:44:12 5 Claims Pursue, Claims Pursue, then
16:44:14 6 presumably a lawyer for Claims Pursue will
16:44:19 7 ask these very questions.

16:44:20 8 MR. HERSCHMANN: Just, Mr. Oldner --

16:44:20 9 THE WITNESS: May I ask a quick
16:44:21 10 question? How much time is left in the
16:44:24 11 deposition?

16:44:24 12 MR. HERSCHMANN: Okay. So,
16:44:24 13 Mr. Pollock, let me do this. I just want
16:44:27 14 to make it clear, and Mr. Dellaportas.

16:44:29 15 Both of you have taken every step
16:44:32 16 possible to interfere with the deposition.
16:44:34 17 I am now going to sign off, as I said. I
16:44:37 18 will contact the Court.

16:44:40 19 Mr. Geron and, Rocco, I'm sorry for
16:44:43 20 the circumstance. Do whatever you'd like.
16:44:45 21 Thank you.

16:44:48 22 MR. POLLOCK: Can we take a short bio
16:44:50 23 break before we continue, five minutes?

16:44:56 24 MR. GERON: A what?

16:44:57 25 THE WITNESS: A bathroom break.

16:44:59 1 MR. BOWEN: That's fine.

16:45:01 2 THE WITNESS: How much time do we
16:45:01 3 have?

16:45:01 4 MR. POLLOCK: Well, we can count it
16:45:02 5 up, but let's take five minutes to go to
16:45:05 6 the bathroom, or at least three minutes to
16:45:07 7 go to the bathroom. All right?

16:45:09 8 THE WITNESS: Okay.

16:45:09 9 (Six-minute break.)

16:45:09 10 EXAMINATION

16:51:49 11 BY MR. GERON:

16:51:49 12 Q. Mr. Oldner, are we back on the record?

16:52:35 13 A. We are.

16:52:37 14 Q. Okay. Mr. Oldner, again, my name is Yann
16:52:01 15 Geron. I represent Orly Genger in this case. I have
16:52:06 16 some notes here.

16:52:07 17 I am trying not to go over items that have
16:52:12 18 been covered by Mr. Bowen's extensive examination,
16:52:14 19 but just bear with me to the extent that it goes back
16:52:17 20 through some testimony or some topics that you
16:52:21 21 covered very early on in the deposition.

16:52:55 22 A. Okay.

16:52:56 23 Q. You testified earlier -- this is about the
16:52:29 24 document production. This is about all of the
16:52:31 25 documents that you produced.

16:52:32 1 And I think with Mr. Bowen's testimony you
16:52:36 2 testified that, Mr. Bowen's questioning you testified
16:52:40 3 that the release of Dalia was produced by you to your
16:52:45 4 counsel, and what he did with that was counsel's
16:52:50 5 decision and was not up to you.

16:52:52 6 Do you recall that testimony in some
16:52:53 7 substance?

16:52:54 8 A. If I had -- yes. If I have a copy of that,
16:52:57 9 which I am assuming I have a copy. There is always
16:53:03 10 the chance that I never got a copy of that, but if I
16:53:06 11 have a copy, I gave him a copy of that, and that
16:53:07 12 should have been produced to you at his discretion.

16:53:45 13 Q. Okay. So is it fair to understand from that
16:53:14 14 testimony, from that answer, that you produced
16:53:16 15 everything that you had that was responsive to our
16:53:20 16 subpoena?

16:53:21 17 A. Yes, sir.

16:53:23 18 MR. POLLOCK: Wait. Can we just
16:53:25 19 clarify from his own? There's a difference
16:53:28 20 between what he transmitted to me and --

16:53:31 21 MR. GERON: No, Mr. Pollock, the
16:53:32 22 answer was given. There's no need for
16:53:34 23 clarification. The questioning is mine,
16:53:36 24 not yours.

16:53:36 1 BY MR. GERON:

16:53:40 2 Q. The next question, with whom did you discuss
16:53:44 3 your appearance at today's deposition? I know you
16:53:47 4 testified earlier that you spoke with Mr. Sagi.

16:53:51 5 I assume you spoke with your attorneys.
16:53:54 6 Have you spoken with anyone else about your
16:53:57 7 deposition today?

16:53:58 8 A. Does my wife count?

16:53:59 9 Q. Well, I don't need to, I don't need to invade
16:54:01 10 that, that, that privacy.

16:54:04 11 A. Okay.

16:54:05 12 Q. Beyond your wife did you speak with anyone
16:54:07 13 else, any other third parties?

16:54:09 14 A. I mean, Robin Rodriguez knew I was giving a
16:54:14 15 deposition, but we didn't talk about the deposition
16:54:16 16 itself.

16:54:48 17 Q. And when you spoke with Sagi, I know you
16:54:20 18 covered this. Just bear with me for a moment.

16:54:22 19 A. Sure.

16:54:23 20 Q. You said that when you discussed it with Sagi,
16:54:25 21 you spoke -- I think your answers to Mr. Bowen were
16:54:27 22 that you spoke about good barbecue sauce in Kansas
16:54:33 23 City. And I'm very much looking forward to sampling
16:54:34 24 that at some point, but did you speak about the
16:54:34 25 deposition itself?

16:54:38 1 A. I hate, I had to go afield on this, but we
16:54:40 2 wouldn't be in Kansas City. We'd be in Arkansas.

16:54:43 3 Q. Oh my --

16:54:43 4 A. Kansas City has average barbecue sauce. Okay.
16:54:47 5 Now that we've got that on the record, let's, let's
16:54:49 6 go back.

16:54:50 7 Q. I'm sorry. That's my --

16:54:50 8 A. I talked to Sagi for 30 seconds this morning.
16:54:53 9 It was a very short conversation.

16:54:58 10 Q. Okay. But did you discuss the substance of
16:54:59 11 your testimony today?

16:55:01 12 A. We did not. Not at all.

16:55:02 13 Q. During the many hours that you have sat today
16:55:05 14 for this deposition and during the breaks that you've
16:55:08 15 taken, other than discussing this matter with your
16:55:11 16 attorney, have you discussed it with any other, the
16:55:11 17 deposition or the substance of the deposition with
16:55:14 18 any other party?

16:55:45 19 A. No, sir, no one at all.

16:55:47 20 Q. Turning to the attorneys' bills that you
16:55:23 21 covered -- the area was covered pretty extensively
16:55:27 22 with Mr. Bowen, the attorneys' bills that are being
16:55:30 23 rendered to you.

16:55:31 24 Are the attorneys rendering bills to you?
16:55:33 25 We're talking about Mr. Pollock or any of the other

16:55:36 1 attorneys who have represented you in the Texas
16:55:38 2 segment of this case and now in the New York segment
16:55:43 3 of this case, are those attorneys' being sent to you
16:55:47 4 directly?

16:56:14 5 A. Yes, they are.

16:55:49 6 Q. And are you --

16:55:49 7 A. They are sent to REI, care of me.

16:55:53 8 Q. Okay. Fair enough. And is REI, or are you,
16:55:57 9 sending those bills to anyone else?

16:55:59 10 A. I am not. I evaluate the bill. I request the
16:56:03 11 money. The money is sent to me, and I pay the bill.

16:56:08 12 Q. And, and when you request the money, this is,
16:56:09 13 you're talking about the loans that you're taking?

16:56:12 14 A. That's correct.

16:56:14 15 Q. Are you sending any documentation when you
16:56:16 16 send -- when you request the loans to fund the bills,
16:56:19 17 are you sending any documentation along with that?

16:56:24 18 A. I prepare a spreadsheet that shows what the
16:56:28 19 fees have been, without any breakdown of the fees,
16:56:31 20 and that also shows a running balance of the checking
16:56:35 21 account for Recovery Effort Inc., and a running
16:56:40 22 balance of the loan with Anglo-American.

16:56:43 23 Q. And were those documents produced to your
16:56:47 24 attorney in conjunction with a response to the
16:56:50 25 subpoenas that we served?

16:56:51 1 A. Yann, I'm not sure.

16:57:36 2 Q. All right. I'm going to ask you to look at,

16:57:12 3 I'm going to ask you to look at those records, look

16:57:13 4 for those records --

16:57:15 5 A. And I --

16:57:15 6 Q. -- and produce them --

16:57:16 7 MR. POLLOCK: Mr. Oldner, I'll ask you

16:57:18 8 not to speak over Mr. Geron. It's very

16:57:20 9 hard for the stenographer.

16:57:22 10 And, Mr. Geron, if you want to meet

16:57:26 11 and confer on documents, I am -- you have

16:57:29 12 my cell phone number. I'm always happy to

16:57:32 13 talk to you, and I always enjoy talking to

16:57:34 14 you.

16:57:35 15 MR. GERON: Mr. Pollock, thank you.

16:57:37 16 BY MR. GERON:

16:57:37 17 Q. I'm going to call for the production of those

16:57:39 18 documents, and I ask that your attorney produce those

16:57:39 19 documents to us.

16:57:44 20 MR. POLLOCK: I will note with

16:57:45 21 objection your request, and we can, I'll be

16:57:49 22 happy to talk about it at a future time.

16:57:51 23 Q. Okay. Does the Orly Genger Trust have any bank

16:57:54 24 accounts?

16:58:28 25 A. No.

16:58:33 1 Q. Does it have any books and records?

16:58:00 2 A. Recovery Effort Inc. has books and records. I
16:58:09 3 do not have books and records for the Orly Genger
16:58:13 4 Trust, as the Orly Genger Trust has no assets at this
16:58:17 5 time, other than lawsuits.

16:58:51 6 Q. Is the Orly Genger Trust filing any tax
16:58:22 7 returns, or has it filed any tax returns while you
16:58:25 8 have been the trustee?

16:58:26 9 A. No, it has not.

16:59:10 10 Q. I want to turn to REI for a moment. Do you
16:58:36 11 know the date of its formation, when the, when REI
16:58:37 12 was formed?

16:58:40 13 A. Either June the 2nd or June the 4th, early
16:58:44 14 June 2019.

16:58:48 15 Q. Okay. I'm going to represent to you that that
16:58:50 16 was on June 4th, 2019.

16:58:52 17 A. All right.

16:58:52 18 Q. Did you have any, any, any role in the
16:58:53 19 formation of REI?

16:59:04 20 A. I, I did not.

16:59:05 21 Q. REI was formed before you were appointed;
16:59:06 22 right?

16:59:07 23 A. Yes.

16:59:08 24 Q. What is REI's state of incorporation?

16:59:11 25 A. Pardon me?

16:59:11 1 Q. What is REI's state of incorporation?

16:59:14 2 A. Arkansas.

16:59:21 3 Q. Who chose that state of incorporation? Who
16:59:24 4 made that decision?

16:59:25 5 A. I do not know.

16:59:29 6 Q. Did you make that decision?

16:59:30 7 A. I did not.

16:59:32 8 Q. Did Sagi make that decision?

16:59:34 9 A. I don't know.

16:59:36 10 MR. POLLOCK: Mr. Geron, I'm giving
16:59:37 11 you a lot of leeway here in trying to let
16:59:40 12 you complete your questioning. Again, none
16:59:42 13 of these questions are --

16:59:47 14 MR. GERON: Mr. Pollock, I hear you.
16:59:47 15 Mr. Pollock, let me move on.

16:59:47 16 BY MR. GERON:

16:59:48 17 Q. Has Recovery Effort filed a claim against the
16:59:51 18 bankruptcy estate, sir?

16:59:52 19 MR. POLLOCK: Mr. Geron, I would
16:59:52 20 respectfully --

16:59:52 21 MR. GERON: Mr. Pollock --

16:59:52 22 MR. POLLOCK: -- ask for the benefit
16:59:52 23 of our stenographer --

16:59:52 24 MR. GERON: Mr. Pollock --

16:59:52 25 MR. POLLOCK: -- that you not speak

16:59:52 1 over me.

16:59:52 2 MR. GERON: Mr. Pollock, please just

16:59:52 3 not your objection, and let's move on. We

16:59:52 4 have very limited time.

17:00:01 5 BY MR. GERON:

17:00:01 6 Q. Has Recovery Effort filed a claims against the

17:00:04 7 bankruptcy estate?

17:00:56 8 A. No.

17:00:56 9 Q. Only the trust has filed a claim against the

17:00:09 10 bankruptcy estate; right?

17:00:12 11 A. Correct.

17:00:14 12 Q. And am I right in understanding that the trust

17:00:17 13 assigned its claims to REI?

17:00:21 14 A. Yes.

17:01:12 15 Q. So, let me move on.

17:01:22 16 A. It assigned certain claims. Let me clarify

17:00:36 17 that.

17:00:37 18 Q. Did it keep any -- did the trust keep any

17:00:39 19 claims?

17:00:39 20 A. I believe that the trust kept claims against

17:00:42 21 Orly Genger.

17:00:51 22 Q. So the trust's claims against Orly Genger were

17:00:53 23 not part of the Inter-Creditor Agreement?

17:00:55 24 MR. POLLOCK: Objection;

17:00:55 25 mischaracterizes the testimony.

17:00:58 1 MR. GERON: I did not characterize any
17:00:58 2 testimony. I'm asking a straight question.

17:01:01 3 BY MR. GERON:

17:01:02 4 Q. Were the trust's claim against Orly Genger part
17:01:05 5 of the Inter-Creditor Agreement?

17:01:09 6 A. I would have to go over the Inter-Creditor
17:01:11 7 Agreement again, and I am not trying to be --

17:01:22 8 Q. You covered this at great length with Mr.
17:01:23 9 Bowen, and I just want to make sure that we have this
17:01:26 10 clear.

17:01:27 11 Is it your understanding that the trust can
17:01:27 12 collect on the Inter-Creditor, on the claims against
17:01:28 13 Orly Genger and not deal with them, or not deal with
17:01:33 14 collection through the Inter-Creditor Agreement?

17:01:37 15 MR. POLLOCK: Objection to form.

17:02:32 16 A. I don't know the answer to that question.

17:01:58 17 Q. In the Inter-Creditor Agreement, the
17:02:01 18 Inter-Creditor Agreement provides that the, that
17:02:10 19 Sagi's collection costs will be paid as part of his
17:02:13 20 distribution. Do you know that provision?

17:02:17 21 MR. POLLOCK: Mr. Geron, can you let
17:02:18 22 us know what page or what paragraph you're
17:02:20 23 looking at?

17:02:21 24 MR. GERON: Yeah, I'm just struggling
17:02:23 25 with putting that up on the screen again.

17:02:26 1 MR. POLLOCK: Maybe Mr. Kurland can be
17:02:29 2 helpful.

17:02:32 3 MR. GERON: The court reporter has our
17:02:33 4 exhibits. I just -- and I know that I sent
17:02:35 5 them early on this morning, but that may
17:02:37 6 have been included in her comments earlier
17:02:39 7 today that she got it just as she was
17:02:39 8 transitioning, as she was transporting to
17:02:43 9 the deposition.

17:02:44 10 BY MR. GERON:

17:02:45 11 Q. Let me move on. The joinder to the Texas
17:02:51 12 Motion to Dismiss, I'm going to talk about it just
17:02:55 13 very briefly. Who prepared that document?

17:03:00 14 A. Jay Ong, my attorney.

17:03:05 15 Q. Was Mr. Dellaportas involved in preparing that
17:03:09 16 document?

17:03:13 17 A. I do not know.

17:03:14 18 MR. POLLOCK: And I note the objection
17:03:15 19 to the extent that you're seeking common
17:03:18 20 interest privilege material.

17:03:23 21 Q. I, I asked nothing of the sort. I'm asking if
17:03:26 22 Mr. Dellaportas was involved in drafting of the
17:03:26 23 document, and I think I got the answer.

17:03:31 24 A. Was he involved in the drafting of it, I have
17:03:33 25 no idea.

17:03:39 1 Q. The only thing that you testified to just a
17:03:41 2 moment ago was that it was presented to you by your
17:03:44 3 attorney; is that correct?

17:04:21 4 A. Jay Ong. I got that from Jay Ong. I got the
17:03:48 5 information from Jay Ong. I believe that Jay Ong
17:03:52 6 received a summary -- no, that's it.

17:03:53 7 MR. POLLOCK: Don't --

17:03:53 8 A. That's all. I'm sorry. That's privileged.
17:03:57 9 It's all from Jay Ong.

17:04:03 10 Q. Who is Renae Oldner?

17:04:06 11 A. Renae Oldner is my wife.

17:04:09 12 Q. There were two emails produced by your attorney
17:04:12 13 that seem to have originated from Renae Oldner to
17:04:16 14 Sagi, to Sagi Genger. Why would -- was Renae Oldner
17:04:20 15 communicating with Sagi?

17:04:24 16 A. No. I used that -- or was it the Renae Oldner,
17:04:26 17 Oldner r-r at SBC Global.net?

17:04:31 18 Q. I believe so. And is that, is that your email
17:04:33 19 or her email?

17:04:34 20 A. That is my email. I have changed it, but it's,
17:04:37 21 in half the places it shows up as hers. That's been
17:04:41 22 my email for more than ten years.

17:04:44 23 Q. Is, is Mrs. Oldner using that email for any
17:04:50 24 purposes?

17:04:50 25 A. For no purposes at all. She had two separate

17:04:58 1 email accounts. She doesn't use that one. That is
17:05:00 2 strictly mine. Years ago it was our joint email
17:05:03 3 account. Before that it was hers.

17:05:07 4 MR. GERON: All right. I'm going to
17:05:08 5 cede the rest of my time to Mr. Cavaliere.

17:05:13 6 EXAMINATION

17:05:16 7 BY MR. CAVALIERE:

17:05:17 8 Q. Okay. Good afternoon, Mr. Oldner.

17:05:20 9 A. How are you?

17:05:22 10 Q. Good. How are you?

17:05:23 11 A. Tired, like you.

17:05:59 12 MR. CAVALIERE: All right. I don't
17:05:29 13 have many questions, and, and I just want
17:05:30 14 to state for the record that the, the
17:05:33 15 trustee will request that this deposition
17:05:37 16 remain open for a number of reasons.

17:05:39 17 There's, obviously, a number of
17:05:41 18 disputes here, a number of speaking
17:05:43 19 objections, and, in addition, we did not
17:05:47 20 get the balance of documents that we had
17:05:51 21 requested.

17:05:51 22 There's actually a dispute with
17:05:52 23 respect to the, the broadness, or, and
17:05:57 24 other, other types of objections that were
17:05:59 25 raised by Mr. Pollock that, hopefully, will

17:06:02 1 be resolved before the judge on June 30th.

17:06:05 2 I'll be asking some limited questions,
17:06:07 3 but I anticipate once we also resolve the
17:06:11 4 issue on the common interest privilege,
17:06:13 5 that we will be meeting again at an
17:06:15 6 appropriate time.

17:06:15 7 BY MR. CAVALIERE:

17:06:15 8 Q. So with that said, just a few questions,
17:06:20 9 Mr. Oldner. If I could ask, you -- I think you've
17:06:29 10 testified and you've acknowledged as a matter of
17:06:32 11 public record that you, that Mr. Oldner, you, Mr.
17:06:34 12 Oldner, in your capacity as the trustee of the Orly
17:06:41 13 Genger trust has filed a Proof of Claim in the case
17:06:43 14 in the amount of approximately \$41 million. Is that
17:06:45 15 correct?

17:06:49 16 MR. POLLOCK: Objection, we're not
17:06:50 17 here on, on the claims evaluation. We're
17:06:52 18 here consistent with Judge Garrity's
17:06:55 19 instruction to talk about the Motion to
17:06:57 20 Dismiss.

17:07:27 21 MR. CAVALIERE: Mr. Pollock, with all
17:07:02 22 due respect, I hear your objection, but
17:07:04 23 it's not, it's not appropriate.

17:07:07 24 I've done a few Motions to Dismiss
17:07:09 25 bankruptcy cases before. I'm very familiar

17:07:13 1 with what's appropriate and what's not
17:07:15 2 appropriate.

17:07:15 3 And I, and I also want to state for
17:07:16 4 the record that I, that along the way you
17:07:19 5 have been stating, you characterized what
17:07:21 6 Judge Garrity ruled during a telephonic
17:07:23 7 conference on Tuesday.

17:07:26 8 I don't believe he necessarily ruled
17:07:28 9 as to the, all of the topics that we've
17:07:30 10 discussed today.

17:07:32 11 I understand your objection, and he'll
17:07:33 12 deal with -- and I'm sure he'll address the
17:07:37 13 objection at an appropriate time. So if
17:07:40 14 you could just allow the, your client to
17:07:42 15 answer the question so we can move forward.

17:07:45 16 BY MR. CAVALIERE:

17:07:50 17 Q. Do you want me to restate the question,
17:07:51 18 Mr. Oldner?

17:07:53 19 A. I have completely forgotten the question by
17:07:56 20 now.

17:07:56 21 Q. Okay. Can you explain the basis for your
17:07:59 22 \$41 million claim in the bankruptcy case?

17:08:04 23 A. That's the claim that the attorneys for the
17:08:10 24 trust advised we file.

17:08:53 25 Q. Okay. You're -- okay. Did you as, as trustee

17:08:22 1 of the Orly Genger Trust approve the filing of a \$41
17:08:27 2 million claim in the bankruptcy case?

17:08:29 3 A. I did.

17:09:04 4 Q. And I'm asking you, what is your understanding
17:08:34 5 of the basis for your \$41 million claim against Orly
17:08:38 6 Genger?

17:08:40 7 A. The basis from that comes from discussion with
17:08:44 8 my attorney, which that discussion would be
17:08:46 9 privileged.

17:09:20 10 Q. That's, that's not -- okay. So you're, you are
17:08:53 11 testifying today that you are actually not aware
17:08:57 12 of -- you personally do not understand the basis for
17:09:00 13 your \$41 million claim against Orly Genger, the
17:09:04 14 beneficiary of the Orly Genger Trust?

17:09:07 15 MR. POLLOCK: Objection; misstates --
17:09:07 16 mischaracterizes and misstates the
17:09:09 17 testimony, a.

17:09:11 18 B, and you're completely flouting both
17:09:14 19 the scheduling order, which limited the,
17:09:17 20 limited the scope of discovery, and you're
17:09:21 21 flouting the clear direction that we got
17:09:23 22 from Judge Garrity that the strength of
17:09:27 23 claims, the claims process, the claims
17:09:30 24 reconciliation process is not at issue on
17:09:33 25 the Motion to Dismiss.

17:09:34 1 And he directed y'all -- see, I'm in
17:09:37 2 Arkansas -- he directed y'all to take
17:09:39 3 discovery limited to the Motion to Dismiss.
17:09:42 4 It's not on the understanding of the Proof
17:09:45 5 of Claim.

17:09:50 6 MR. CAVALIERE: I disagree --

17:09:50 7 MR. POLLOCK: And I would
17:09:50 8 respectfully ask --

17:09:52 9 MR. CAVALIERE: -- and I will just
17:09:52 10 move on and note for the record you've
17:09:53 11 directed, I guess you've directed your
17:09:56 12 client not to answer.

17:09:57 13 MR. POLLOCK: My client already
17:09:58 14 answered. I'm asking you to respect his
17:10:00 15 time and move along to the topics at hand.
17:10:04 16 He already answered.

17:10:05 17 BY MR. CAVALIERE:

17:10:05 18 Q. Mr. Oldner, you testified earlier that you
17:10:08 19 believe you could be fair and impartial as the
17:10:12 20 trustee of the Orly Genger Trust; is that correct?

17:10:14 21 A. That is correct.

17:10:16 22 Q. Do you believe you acted fairly and impartially
17:10:20 23 when you filed a \$41 million claim against the
17:10:22 24 beneficiary of your trust in this bankruptcy case?

17:10:26 25 A. Mr. Cavaliere, why do you insist upon saying

17:10:29 1 "beneficiary" when the trust has beneficiaries.

17:10:32 2 There's a difference between singular and plural.

17:10:33 3 I don't want to argue, but I am filing -- I
17:10:33 4 am trustee for the beneficiaries of the Orly Genger
17:10:40 5 Trust. I will refer you to the trust document before
17:10:45 6 we go any further on this line.

17:10:53 7 Q. Okay. Do, do you believe you acted fairly and
17:10:54 8 impartially when you filed a \$41 million claim
17:10:55 9 against the beneficiaries, well, against Orly Genger
17:11:03 10 in, in this bankruptcy estate?

17:11:05 11 MR. POLLOCK: Objection to form.

17:11:07 12 A. Will you please restate the question?

17:11:09 13 Q. Do you believe you acted fairly and impartially
17:11:13 14 when you filed a \$41 million claim against Orly
17:11:16 15 Genger in her bankruptcy case?

17:11:18 16 A. When the Orly Genger Trust filed a claim
17:11:22 17 against Orly Genger in the bankruptcy, I feel like I
17:11:26 18 acted fairly and in the best interest of the trust
17:11:28 19 and the beneficiaries of the trust.

17:12:03 20 Q. Do you believe you acted fairly and impartially
17:11:35 21 when you provided a general release in favor of Dalia
17:11:37 22 Genger, the former trustee?

17:11:42 23 A. Mr. Cavaliere, I would respectfully ask that
17:11:45 24 you make a proffer as to how that relates to the
17:11:48 25 Motion to Dismiss, given the direction from Mr. -- I

17:11:55 1 keep making that mistake. I apologize -- from Judge
17:11:58 2 Garrity who very clearly directed you that the
17:12:02 3 strength of the claims that were proposed to be sold
17:12:04 4 would not be the subject of the Motion to Dismiss,
17:12:06 5 and would not be evaluated, and would not be the
17:12:11 6 subject of discovery. We precisely covered this
17:12:14 7 during the June 23rd conference with the Court.

17:12:19 8 MR. CAVALIERE: Mr. Pollock, I
17:12:20 9 disagree with your, your recitation. I'd
17:12:22 10 ask that you allow the, your client to
17:12:24 11 answer the question, because I think it's a
17:12:27 12 fair question.

17:12:29 13 MR. POLLOCK: I would respectfully ask
17:12:31 14 that you make a proffer as to how that
17:12:33 15 relates to the Motion to Dismiss --

17:12:35 16 MR. CAVALIERE: I am not --

17:12:35 17 MR. POLLOCK: -- instead of seeking
17:12:37 18 discovery on the claims that you propose to
17:12:39 19 be sold to the entity for which
17:12:42 20 Mr. Herschmann is a representative in your
17:12:44 21 characterization.

17:12:48 22 MR. CAVALIERE: Mr. Pollock, we have,
17:12:50 23 we have a scheduling order, as you said,
17:12:51 24 that relates to the Motion to Dismiss, as
17:12:53 25 well as the trustee's motion; okay?

17:12:55 1 MR. POLLOCK: Yeah.

17:12:56 2 MR. CAVALIERE: That's on -- there's a
17:12:56 3 scheduling order, and there's broad
17:13:00 4 questions that can be asked as a result of
17:13:03 5 that. We've had this debate numerous
17:13:03 6 times.

17:13:04 7 I'm going to ask the question one more
17:13:07 8 time; okay? Your, your objection is noted.
17:13:09 9 We will deal with this before Judge Garrity
17:13:12 10 at the appropriate time.

17:13:13 11 MR. POLLOCK: We did.

17:13:14 12 MR. CAVALIERE: I will ask it one more
17:13:14 13 time.

17:13:16 14 MR. POLLOCK: We did. We talked
17:13:16 15 about the --

17:13:16 16 BY MR. CAVALIERE:

17:13:16 17 Q. Do you believe, Mr. Oldner, that you acted
17:13:21 18 fairly and impartially when you provided a general
17:13:24 19 release in favor of Dalia Genger, the former trustee?

17:13:27 20 A. Mr. Cavaliere, I would refer you to the trust
17:13:30 21 document that is, the statement of trust document
17:13:33 22 that each trustee provides a release to previous
17:13:37 23 trustees.

17:13:44 24 MR. KURLAND: Move to strike as
17:13:46 25 nonresponsive.

17:13:51 1 MR. POLLOCK: I didn't hear who moved
17:13:53 2 to strike, but he answered the question.
17:13:55 3 If whoever doesn't like that answer, I
17:13:59 4 don't know what to say.

17:14:02 5 MR. KURLAND: Just note for the
17:14:05 6 record, please, it was nonresponsive.
17:14:07 7 Thank you.

17:14:07 8 MR. CAVALIERE: It's, obviously, not
17:14:07 9 responsive. Okay. We'll just move on.

17:14:07 10 BY MR. CAVALIERE:

17:14:09 11 Q. If Judge Garrity allows, allows the Orly Genger
17:14:13 12 Trust to prosecute the \$32 million claim and you're
17:14:18 13 successful, please explain how you intend on
17:14:22 14 distributing such monies?

17:14:26 15 MR. POLLOCK: Objection; asked and
17:14:27 16 answered. Mr. Geron squarely asked that
17:14:31 17 question not 15 minutes ago.

17:14:32 18 Q. Okay. Please answer the question, if you don't
17:14:34 19 mind.

17:15:05 20 MR. POLLOCK: Are you asking him to
17:14:36 21 answer a question that was answered 15
17:14:38 22 minutes ago?

17:14:40 23 Q. I'd, I'd like an answer to my question, please.

17:14:43 24 MR. POLLOCK: You're just harassing
17:14:43 25 and badgering the witness --

17:14:45 1 MR. CAVALIERE: I'm not --

17:14:45 2 MR. POLLOCK: -- to keep asking him
17:14:46 3 the same thing over and over.

17:14:48 4 MR. CAVALIERE: I'm not harassing
17:14:48 5 anyone. I didn't ask the question. Did I
17:14:48 6 ask the question? This is my first time
17:14:52 7 asking this question. I asked it --

17:14:53 8 THE WITNESS: This question has been
17:14:54 9 asked many times. Did you hear the other
17:14:56 10 answers?

17:14:59 11 MR. CAVALIERE: Okay. Okay. It's
17:15:00 12 easy to answer it again, then.

17:15:02 13 MR. POLLOCK: Mr. Cavaliere, order a
17:15:04 14 transcript.

17:15:47 15 THE WITNESS: Why did you wait until
17:15:07 16 the end of the day to do this to me?

17:15:11 17 MR. POLLOCK: Because they're
17:15:12 18 harassing you by asking the same questions.

17:15:15 19 MR. CAVALIERE: I'm not harassing
17:15:16 20 anyone.

17:15:16 21 BY MR. CAVALIERE:

17:15:16 22 Q. Okay. So, so are you, are you not going to
17:15:18 23 answer the question as to what you intend, how you
17:15:18 24 intend to distribute the \$32.3 million if you recover
17:15:22 25 it?

17:15:22 1 A. I will recover -- I will do it exactly in the
17:15:25 2 manner that I stated earlier.

17:15:37 3 Q. Okay. Have you read the June 2013 Settlement
17:15:41 4 Agreement with the Trump Group?

17:15:45 5 A. I have.

17:16:19 6 Q. Are you familiar -- are you aware that there's
17:15:50 7 an indemnity provision in that agreement in favor,
17:15:53 8 potentially in favor of the Trump Group?

17:15:53 9 MR. POLLOCK: Mr. Cavaliere, if you're
17:15:59 10 referring to a document or a particular
17:16:01 11 page of a document, can we get it up in
17:16:03 12 front of us and mark it, so we understand
17:16:06 13 what it is you're referring to?

17:16:08 14 MR. CAVALIERE: Sure. I can email it
17:16:12 15 to everybody. Is it, is it -- and I
17:16:16 16 can't -- I don't think I can physically do
17:16:19 17 it, but can -- I'm not sure if anyone else
17:16:22 18 can.

17:16:22 19 MR. POLLOCK: I think Mr. Kurland was
17:16:24 20 able to screen share earlier.

17:16:26 21 MR. KURLAND: Yeah, I think this is a
17:16:27 22 waste of time, Mr. Pollock, but, but, but
17:16:29 23 maybe -- Rocco, maybe you can ask the
17:16:33 24 question, and while you do that, I'll, I'll
17:16:35 25 see if I can dig up the Trump Group

17:16:37 1 agreement.

17:16:37 2 MR. CAVALIERE: I'll send it to you,
17:16:37 3 Andrew.

17:16:37 4 MR. POLLOCK: Mr. Cavaliere is asking
17:16:39 5 the witness to characterize an
17:16:43 6 eight-year-old document, or, sorry, excuse
17:16:43 7 me, a seven-year-old document.

17:16:44 8 Let's look at what he is asking the
17:16:53 9 witness to characterize. It's a 44-page
17:16:55 10 document, and it's complex legal jargon.

17:17:04 11 MR. KURLAND: This is speaking
17:17:04 12 objection.

17:17:05 13 MR. CAVALIERE: Yeah.

17:17:05 14 MR. KURLAND: The witness testified he
17:17:07 15 knows about the document. Rocco should
17:17:08 16 proceed with the question.

17:17:08 17 MR. POLLOCK: Okay. So why --

17:17:09 18 MR. KURLAND: He knows about the
17:17:10 19 document.

17:17:11 20 MR. POLLOCK: Mr. Kurland, your color
17:17:14 21 commentary is unnecessary.

17:17:17 22 MR. CAVALIERE: Let's do this, while
17:17:19 23 Andrew pulls up the document, I'll, I'll
17:17:21 24 just retract the question, and I'll ask a
17:17:26 25 few other questions, because time is short,

17:17:28 1 and then we can go back to this area of
17:17:31 2 topic.

17:17:34 3 MR. POLLOCK: Good idea.

17:17:34 4 BY MR. CAVALIERE:

17:17:34 5 Q. All right. Mr. Oldner, you testified earlier,
17:17:37 6 and please correct me if I'm wrong, that a company
17:17:41 7 called Anglo-American is the party that makes payment
17:17:43 8 of the legal fees of REI; is that correct?

17:18:25 9 A. That is correct.

17:18:26 10 Q. Do you happen to know whether the Orly Genger
17:17:53 11 Trust guarantees the obligations of REI to pay back
17:18:03 12 the Anglo-American loan?

17:18:05 13 MR. POLLOCK: Objection for the
17:18:07 14 reasons previously stated. Also, didn't we
17:18:09 15 cover this this morning?

17:18:12 16 A. The, the Orly Genger Trust has no money unless
17:18:15 17 REI collects, and REI pays the fees before Orly
17:18:19 18 Genger Trust gets the money.

17:18:23 19 Q. That, that wasn't my question. Does the Orly
17:18:25 20 Genger Trust guarantee the obligations that REI has
17:18:31 21 against Anglo-American, to the extent REI does not
17:18:34 22 pay back the loan --

17:18:36 23 A. No, it does not --

17:18:37 24 Q. -- to Anglo- --

17:18:37 25 A. No.

17:18:37 1 Q. Okay.

17:18:38 2 A. No, it does not.

17:18:40 3 Q. Do you know whether another party is funding

17:18:46 4 Anglo-American in connection with the fees that

17:18:48 5 Anglo-American has paid to REI?

17:18:54 6 MR. POLLOCK: Objection;

17:18:54 7 mischaracterizes the testimony.

17:18:57 8 A. What does you mean?

17:18:58 9 Q. I didn't, I didn't mischaracterize any

17:19:00 10 testimony. I'm not -- I'm asking --

17:19:37 11 A. Ask the question.

17:19:02 12 Q. I'm asking -- do you understand the question,

17:19:04 13 Mr. Oldner?

17:19:05 14 A. Actually, could you rephrase it? I don't know,

17:19:07 15 I don't know what you're asking.

17:19:11 16 Q. Sure. Anglo-American -- according to your

17:19:14 17 testimony, Anglo-American is the, is the entity that

17:19:17 18 has made the payment of legal fees of REI.

17:20:02 19 A. Yes.

17:19:22 20 Q. To your knowledge, where, who, who ultimately

17:19:28 21 funds Anglo-American's fees, the monies that

17:19:33 22 Anglo-American pays to REI for those fees?

17:19:37 23 A. Anglo-American.

17:19:40 24 Q. Is it -- do you believe -- do you have any

17:19:43 25 knowledge that Sagi Genger is loaning Anglo-American

17:19:48 1 any monies that are then loaned to REI?

17:19:52 2 A. No.

17:20:22 3 Q. Do you have any knowledge that Robin Rodriguez
17:19:57 4 personally lent money to Anglo-American that has been
17:20:01 5 paid to REI?

17:20:04 6 A. Robin Rodriguez is one of the owners of
17:20:06 7 Anglo-American.

17:20:07 8 Q. I understand that.

17:20:34 9 A. So why --

17:20:11 10 Q. So what's the answer?

17:20:12 11 MR. POLLOCK: So, Mr. Cavaliere --

17:20:12 12 A. I don't understand the question. It's his
17:20:14 13 company. Is he loaning himself money? No. It's his
17:20:17 14 money.

17:20:18 15 MR. POLLOCK: And, Mr. Cavaliere, I
17:20:20 16 don't understand --

17:20:21 17 Q. Well, that's doesn't happen? Okay. All right.

17:20:23 18 MR. POLLOCK: Mr. Cavaliere, I don't
17:20:24 19 understand what this possibly has to do
17:20:26 20 with the Motion to Dismiss, but it sounds
17:20:27 21 like you're moving on.

17:20:29 22 MR. CAVALIERE: Mr. Pollock, this
17:20:29 23 is not -- I'm not -- this is not, this is
17:20:29 24 not a school, okay, where I have to educate
17:20:33 25 you -- you're not a bankruptcy lawyer -- as

17:20:36 1 to what it has, what it has to do with the
17:20:37 2 Motion to Dismiss. Okay?

17:20:39 3 MR. POLLOCK: Yes. But --

17:20:39 4 MR. CAVALIERE: Okay? In all
17:20:39 5 seriousness --

17:20:39 6 MR. POLLOCK: -- but I --

17:20:39 7 MR. CAVALIERE: -- this has been a big
17:20:41 8 waste of time in many respects because of
17:20:43 9 your speaking objections; okay?

17:20:46 10 MR. POLLOCK: But --

17:20:46 11 MR. CAVALIERE: I would like to just
17:20:47 12 move on. I don't have many more questions.

17:20:50 13 MR. POLLOCK: Mr. Cavaliere, I don't
17:20:52 14 appreciate your disrespectful, patronizing
17:20:53 15 tone, but I was on the call with Judge
17:20:54 16 Garrity on --

17:20:59 17 MR. CAVALIERE: I --

17:20:59 18 MR. POLLOCK: Don't interrupt me,
17:20:59 19 because, let me make a record for the
17:21:01 20 stenographer -- I was on the phone with
17:21:03 21 the, Judge Garrity on Tuesday afternoon
17:21:05 22 when he expressly limited the, the breadth
17:21:11 23 of the discovery to the Motion to Dismiss.
17:21:13 24 He was dead clear about it.

17:21:16 25 And you have chosen to repeatedly

17:21:19 1 flout his direction, as well as Kasowitz
17:21:21 2 has, Eric Herschmann has, and Yann Geron's
17:21:26 3 topics, while brief, were off topic also.

17:21:31 4 In fact, it wasn't until 2:25 Arkansas
17:21:34 5 time, 3:25 your time, that finally Mr.
17:21:37 6 Bowen said, Okay, let's move on to the
17:21:39 7 Motion to Dismiss.

17:21:40 8 It's inappropriate. You have an
17:21:42 9 elderly -- excuse me.

17:21:44 10 THE WITNESS: That's fine.

17:21:45 11 MR. POLLOCK: You have a mid-sixties
17:21:47 12 witness --

17:22:18 13 THE WITNESS: Elderly.

17:21:48 14 MR. POLLOCK: -- who has been very
17:21:50 15 patient with y'all all day long, who has
17:21:53 16 health issues. Stick to the topics at
17:21:55 17 hand, and we will be able to get done.

17:21:57 18 MR. CAVALIERE: I -- okay. Adam, I
17:21:57 19 just -- honestly, I disagree with you about
17:22:00 20 everything you just said.

17:22:00 21 So we'll just -- obviously, it's going
17:22:02 22 to be addressed with the judge at the
17:22:03 23 appropriate time. So let me just move
17:22:04 24 forward.

17:22:05 25 MR. POLLOCK: Mr. Cavaliere --

17:22:08 1 MR. CAVALIERE: I just want to ask my
17:22:08 2 questions, Adam. If you want, I can just
17:22:10 3 stop. If you prefer, I'll just stop, okay,
17:22:11 4 because we're going to keep this open
17:22:11 5 anyway.

17:22:14 6 Just tell me what you want me to do.
17:22:14 7 If every single question I'm going to ask
17:22:14 8 is going to be objected to, I don't have
17:22:14 9 the patience for it.

17:22:22 10 THE WITNESS: Rocco, while I'm here --

17:22:23 11 MR. CAVALIERE: Okay.

17:22:23 12 THE WITNESS: -- please, please let's
17:22:24 13 continue.

17:22:25 14 MR. POLLOCK: If you're already aware
17:22:26 15 that every question you're going to ask is
17:22:27 16 objectionable because it strays beyond the
17:22:30 17 bounds, please try to focus in your
17:22:33 18 questions on the topic at hand.

17:22:36 19 BY MR. CAVALIERE:

17:22:37 20 Q. Mr. Oldner, did you, did you review the
17:22:39 21 trustee's motion seeking a loan and a sale of certain
17:22:42 22 causes of action?

17:22:44 23 A. Would you excuse me for just one moment,
17:22:47 24 please? Okay. I'm sorry. I apologize. Would you
17:22:52 25 ask the question again? I was inattentive.

17:22:56 1 Q. Did you, did you review the trustee's motion
17:22:59 2 seeking a loan and a sale of certain causes of
17:23:03 3 action?

17:23:04 4 A. Yes, I did.

17:23:05 5 Q. I understand from your counsel that you do not
17:23:08 6 intend on filing in objection to the sale aspect of
17:23:10 7 the trustee's motion; is that correct?

17:23:47 8 A. At this time I don't.

17:23:19 9 Q. Do you -- okay. At this time you don't. Do
17:23:23 10 you anticipate --

17:23:23 11 A. I --

17:23:23 12 Q. -- there's a possibility you may change your
17:23:26 13 mind before the hearing?

17:23:27 14 A. Rocco, at this moment, I don't anticipate
17:23:32 15 changing my mind.

17:23:35 16 Q. Okay. Do you anticipate --

17:23:36 17 A. But I reserve, obviously, blah, blah, blah, you
17:23:38 18 know.

17:24:15 19 Q. Okay. Do you anticipate --

17:23:40 20 A. I'm trying to be honest with you.

17:23:40 21 Q. Do you anticipate filing objection to the loan
17:23:44 22 aspect of the trustee's motion?

17:23:47 23 A. At this time I don't -- at this time I am going
17:23:53 24 to take that under advisement. I have not, I have
17:23:57 25 not given that consideration.

17:24:03 1 Q. Okay.

17:24:35 2 A. I have plans --

17:24:05 3 Q. Okay. Did Mr. Pollock send you, in connection
17:24:10 4 with the discovery process here, a copy of the
17:24:13 5 trustee's discovery requests?

17:24:17 6 MR. POLLOCK: Mr. Cavaliere, to the
17:24:18 7 extent that you are seeking my
17:24:20 8 communication with my client, I object,
17:24:22 9 and -- and, frankly, you can probably
17:24:27 10 rephrase that question as, Have you
17:24:29 11 reviewed them, instead of specifically
17:24:30 12 seeking my communications with him.

17:24:35 13 Q. It's fine. Have you received a copy of the
17:24:40 14 trustee's subpoena for documents in connection with
17:24:44 15 the Motion to Dismiss and the trustee's motion?

17:24:47 16 MR. POLLOCK: Objection,
17:24:47 17 mischaracterizes the documents. But,
17:24:49 18 again, if you want to ask him have you
17:24:51 19 reviewed the things, the pieces of paper, I
17:24:53 20 think it's a better way to ask him.

17:24:56 21 Q. Mr. Oldner --

17:24:57 22 A. Yes.

17:24:58 23 Q. -- the trustee prepared a subpoena in
17:25:02 24 connection with the Motion to Dismiss requesting
17:25:05 25 documents from you.

17:25:07 1 A. Yes.

17:25:07 2 Q. Did you review that subpoena or request for
17:25:10 3 documents?

17:25:12 4 MR. POLLOCK: Objection,
17:25:12 5 mischaracterizes the documents.

17:25:16 6 Q. Mr. Oldner, can you answer, please?

17:25:17 7 A. I have not received a subpoena from you.

17:25:27 8 Q. So Mr., Mr. Pollock -- okay. When you say you
17:25:33 9 didn't receive a subpoena from me, did you receive an
17:25:36 10 email from Mr. Pollock with a copy of my subpoena?

17:25:41 11 MR. POLLOCK: Mr. Cavaliere, I think
17:25:43 12 this could be much easier if you would just
17:25:45 13 ask him have you reviewed the darn
17:25:47 14 documents?

17:25:48 15 That's very easy to ask, instead of
17:25:51 16 trying to ask did I email it to him or not,
17:25:53 17 seeking my privileged communications with
17:25:56 18 him.

17:25:57 19 MR. CAVALIERE: I'm not seeking --

17:25:57 20 MR. POLLOCK: Just ask him if he has
17:25:58 21 read it.

17:25:59 22 MR. CAVALIERE: I didn't ask for
17:26:01 23 privileged communications. I just want to
17:26:03 24 know if he is aware of the request for
17:26:05 25 documents that the trustee sent.

17:26:08 1 THE WITNESS: Am I aware of the
17:26:09 2 request for documents, yes, sir.
17:26:10 3 BY MR. CAVALIERE:
17:26:11 4 Q. Okay. And what was the process that you
17:26:14 5 undertook to provide documents in response to the
17:26:17 6 trustee's request for information?
17:26:20 7 A. I gathered all of the documents that I had.
17:26:24 8 There is a chance that I missed a spreadsheet, and
17:26:27 9 that would be unintentional and -- which I will
17:26:31 10 correct. And I forwarded all of those to
17:26:39 11 Mr. Pollock.
17:26:40 12 Q. When you forwarded those documents to
17:26:41 13 Mr. Pollock, did you copy anyone else on that
17:26:44 14 transmission?
17:26:45 15 A. I did not.
17:27:20 16 Q. Okay. And what email addresses do you use in
17:26:50 17 connection with your communications in this case?
17:26:53 18 A. Oldner r-r at SBC Global.net. I also --
17:27:01 19 Q. Any --
17:27:01 20 A. When Yahoo doesn't work, which is occasionally,
17:27:04 21 but it's better, I also use Michael Oldner, my name,
17:27:10 22 at Gmail.com.
17:27:16 23 Q. And in looking for documents, you looked at all
17:27:19 24 of your email addresses?
17:27:20 25 A. Oh, yes, sir. The only document I would have

17:27:23 1 missed, I believe, to the best of my knowledge, is if
17:27:26 2 I missed the spreadsheet that kept up with my loan.

17:27:33 3 All of my emails are contained between
17:27:35 4 those -- all of my communications with anybody is
17:27:38 5 contained between those two.

17:27:41 6 MR. POLLOCK: And you will send that
17:27:42 7 to me after we are done today?

17:27:44 8 THE WITNESS: I will go home and send
17:27:46 9 that to you immediately, yes. That is an
17:27:48 10 accidental --

17:27:50 11 MR. CAVALIERE: Okay.

17:27:51 12 THE WITNESS: -- I did not mean to
17:27:52 13 leave that out. I missed it.

17:27:55 14 BY MR. CAVALIERE:

17:27:56 15 Q. Okay. When you signed up for this role as
17:28:00 16 trustee, did you have an understanding as to how long
17:28:03 17 you would be the trustee?

17:28:04 18 A. Yes.

17:28:13 19 Q. Okay. Can you tell us how long you anticipated
17:28:15 20 being the trustee?

17:28:17 21 A. A couple of years.

17:28:47 22 Q. Okay.

17:28:20 23 A. It looks like it's going to be longer than
17:28:22 24 that.

17:28:23 25 Q. I apologize. I spoke over you. Say that

17:28:26 1 again. I couldn't hear you.

17:28:27 2 A. It looks like it's going to be longer than
17:28:29 3 that.

17:29:03 4 Q. Okay. In your opinion, if you were to decide
17:28:34 5 to resign as trustee in the future, do you believe
17:28:38 6 you have the power to appoint a successor trustee?

17:28:42 7 A. I do.

17:28:44 8 Q. And assuming you're correct in your capacity as
17:28:48 9 a trustee or the Orly Genger Trust, would you accept
17:28:51 10 recommendations of future trustees from Robin
17:28:55 11 Rodriguez or from Sagi Genger?

17:28:58 12 A. No, I would not, actually.

17:29:01 13 Q. Okay. If you were to resign as trustee, would
17:29:06 14 you select a trustee that is an independent person
17:29:10 15 and has absolutely no connection to the bankruptcy
17:29:13 16 case?

17:29:15 17 A. Absolutely. I believe that that is my best
17:29:19 18 service in the case, is to be able to be independent.

17:29:22 19 Q. Thank --

17:29:22 20 A. And I would want someone else -- if something
17:29:22 21 were to happen to me, or I were to resign, I would
17:29:27 22 want it to be somebody who is independent.

17:29:29 23 Q. Thank you very much. Did you sign a document
17:29:33 24 called a Common Interest Privilege Agreement?

17:29:41 25 A. Rocco, I'm not -- I'm not saying I didn't, but

17:29:46 1 I'm not familiar with it right now.

17:29:49 2 MR. POLLOCK: If you have a document,
17:29:50 3 Mr. Cavaliere, that you want to show the
17:29:52 4 witness.

17:29:53 5 A. You know there are so many documents.

17:29:55 6 MR. POLLOCK: You know what -- let me
17:29:56 7 finish.

17:29:57 8 THE WITNESS: Can we take a break, so
17:29:58 9 I can walk around? Can we take a break?

17:30:01 10 MR. CAVALIERE: Of course we can take
17:30:02 11 a break.

17:30:03 12 THE WITNESS: Give me a ten minute
17:30:04 13 walk-around; okay?

17:30:06 14 MR. CAVALIERE: Sure.

17:30:06 15 THE WITNESS: Just whenever I start
17:30:07 16 talking over people I'm doing the wrong
17:30:10 17 thing; okay?

17:30:11 18 MR. CAVALIERE: Thank you.

17:30:12 19 (Six-minute break.)

17:30:12 20 MR. CAVALIERE: We're back on the
17:30:12 21 record. I'll ask Mr. Kurland can, if you
17:30:12 22 got the document that I emailed you.

17:36:18 23 MR. KURLAND: Yes.

17:36:18 24 MR. CAVALIERE: If you can share that,
17:36:18 25 you know, put that on the screen.

17:36:18 1 MR. KURLAND: This is the Settlement
17:38:27 2 Agreement, Rocco, just so I have it right?

17:38:28 3 MR. CAVALIERE: Yes, the Trump Group
17:38:28 4 Settlement Agreement from 2013.

17:38:29 5 (Exhibit No. 2 was marked.)

17:38:29 6 BY MR. CAVALIERE:

17:38:32 7 Q. Mr. Oldner, do you see that, do you see a copy
17:38:40 8 of the Trump Group, what I will call the -- well,
17:38:44 9 what is titled the Settlement Agreement and Release
17:38:47 10 document?

17:39:53 11 A. Yes.

17:38:48 12 Q. Okay. Are you familiar with this document?

17:38:53 13 A. Have I read it, yes.

17:38:55 14 Q. Okay. Can you turn to paragraph five of the
17:39:00 15 document.

17:39:16 16 A. (Witness complies.)

17:39:16 17 Q. Are you familiar with the indemnification
17:39:17 18 provision of this agreement? And if you need more
17:39:24 19 time to read it, please just let me know.

17:39:26 20 A. Keep going down a little bit. Let me finish
17:39:27 21 it. (Witness reviews document.) Okay.

17:39:47 22 Q. Okay. What is your understanding of the, the
17:39:52 23 meaning of that provision?

17:39:55 24 MR. POLLOCK: Objection; seeks a legal
17:39:56 25 conclusion.

17:39:59 1 Q. You can answer, Mr. Oldner.

17:40:03 2 A. The explanation of that I would consult with
17:40:07 3 attorneys for.

17:40:10 4 Q. Okay. Is it, is it your understanding that the
17:40:14 5 group called the Trump Group has asserted that they
17:40:18 6 have an indemnification right under this Settlement
17:40:22 7 Agreement?

17:40:23 8 MR. POLLOCK: Objection; seeks a legal
17:40:24 9 conclusion.

17:40:25 10 A. I would have to get legal --

17:40:27 11 MR. POLLOCK: I'm just asking him what
17:40:28 12 he knows.

17:40:29 13 THE WITNESS: I would have to get a
17:40:30 14 legal opinion on that.

17:40:31 15 BY MR. CAVALIERE:

17:40:31 16 Q. I'm asking if another party, the Trump Group,
17:40:34 17 has, has asserted, factually asserted that they
17:40:38 18 have -- I'm not asking you to weigh in on whether
17:40:41 19 their assertion is correct, or whether they'll
17:40:44 20 ultimately have a right to an indemnity, I'm asking
17:40:48 21 you factually if you know whether the Trump Group has
17:40:48 22 asserted that they have an indemnification right
17:40:54 23 under the Settlement Agreement.

17:41:40 24 A. Do I know? No, I do not.

17:41:04 25 Q. Okay. Are you aware that Dalia Genger has

17:41:09 1 brought a petition in the Surrogate's Court action to
17:41:13 2 enjoin the Trump Group from making payments in
17:41:17 3 connection with the Trump notes?

17:41:22 4 MR. POLLOCK: Mr. Cavaliere, is, is
17:41:22 5 that one of the removed Surrogate's Court
17:41:26 6 actions for which there's a status
17:41:28 7 conference on August 12th?

17:41:37 8 BY MR. CAVALIERE:

17:41:37 9 Q. Mr. Oldner, please answer the question.

17:41:37 10 A. I don't know what document you're talking
17:41:38 11 about. I don't know what case you're talking about.

17:41:41 12 Q. Okay. So in your capacity as the trustee of
17:41:43 13 the Orly Genger Trust, is it your testimony you're
17:41:47 14 not familiar with Dalia's petition that I just
17:41:50 15 referenced in the Surrogate's Court action?

17:41:53 16 A. If you will put it in front of me and let me
17:41:56 17 look at it, I will tell you if I am familiar with it.

17:42:37 18 MR. CAVALIERE: Okay. I have to find
17:42:03 19 another -- I, I -- there was -- I think
17:42:07 20 there was a Proof of Claim that was
17:42:10 21 circulated by Yann Geron's firm that has
17:42:16 22 the petition attached to it? Does the
17:42:19 23 reporting company have a copy of that?

17:42:21 24 MR. POLLOCK: Mr. Cavaliere, when were
17:42:23 25 you talking about something that was

17:42:25 1 circulated? I don't know what email you're
17:42:28 2 talking about.

17:42:30 3 MR. CAVALIERE: All right. Let me see
17:42:32 4 if I can find the Proof of Claim. I think
17:42:34 5 that's just going to be easier.

17:43:02 6 MR. POLLOCK: Mr. Cavaliere, is it
17:43:04 7 your contention that the scheduling order
17:43:05 8 permits discovery on the Proof of Claim?

17:43:10 9 MR. CAVALIERE: I'm not seeking, I'm
17:43:13 10 not seeking an allowance or disallowance of
17:43:18 11 the Proof of Claim.

17:43:19 12 I'm asking questions that could have a
17:43:21 13 bearing on Judge Garrity's determination on
17:43:23 14 a Motion to Dismiss, and I think it's quite
17:43:26 15 relevant, as will be demonstrated to the
17:43:29 16 Court at the appropriate time when an
17:43:31 17 objection is filed to the Motion to
17:43:32 18 Dismiss. Okay? Please stop with the
17:43:35 19 question, the objections.

17:43:41 20 MR. POLLOCK: I have respectfully
17:43:43 21 asked all day long for somebody to spend 30
17:43:46 22 seconds just telling me how any of these
17:43:48 23 topics are relevant to the Motion to
17:43:50 24 Dismiss, and the continued refusal to do so
17:43:54 25 indicates that what you're actually doing

17:43:57 1 is harassing the witness.

17:43:59 2 I have asked respectfully and
17:44:02 3 repeatedly for a brief proffer. I would
17:44:04 4 appreciate if you would make one.

17:44:09 5 MR. CAVALIERE: I disagree that we're
17:44:10 6 harassing the witness.

17:44:12 7 Mr. Kurland --

17:44:16 8 MR. KURLAND: Yes.

17:44:16 9 MR. CAVALIERE: -- if you don't mind,
17:44:16 10 can you share, can you upload that Proof of
17:44:18 11 Claim when you get a chance?

17:44:22 12 MR. KURLAND: Yeah, is that -- that
17:44:22 13 was in one of the exhibits that, that Yann
17:44:24 14 circulated; is that right, Rocco?

17:44:28 15 MR. CAVALIERE: It is, but I also
17:44:30 16 emailed it to you separately.

17:44:31 17 MR. KURLAND: Okay. I haven't gotten
17:44:31 18 that yet. Okay. This is the OG Trust
17:44:31 19 Proof of Claim, though; correct?

17:44:36 20 MR. CAVALIERE: Right.

17:44:36 21 MR. KURLAND: Okay. Then, yes, I have
17:44:37 22 that here. Here you go.

17:44:37 23 MR. POLLOCK: If there's an email that
17:44:40 24 Mr. Geron circulated, it would be helpful
17:44:43 25 if you guys would share that with me, so

17:44:46 1 that I can also be on the same page during
17:44:48 2 this deposition.

17:44:48 3 (Exhibit No. 3 was marked.)

17:44:48 4 BY MR. CAVALIERE:

17:44:49 5 Q. Okay.

17:44:52 6 A. And which page are you going to?

17:44:53 7 Q. Well -- all right. This is the only -- I don't
17:44:54 8 think we need -- there's not going to be any other
17:44:57 9 exhibits that I have, so let's just go through this.

17:44:58 10 MR. CAVALIERE: If you could go down
17:45:00 11 to -- just go down a little further, until
17:45:04 12 you get to the petition, which is one of
17:45:05 13 the first. Okay. So you can stop there.

17:45:09 14 BY MR. CAVALIERE:

17:45:10 15 Q. Are you, are you familiar -- this is the
17:45:11 16 document I was referring to earlier, Mr. Oldner.

17:45:19 17 MR. POLLOCK: Mr. Kurland went very
17:45:22 18 fast. This is a document that's attached
17:45:24 19 to the Proof of Claim?

17:45:26 20 MR. CAVALIERE: That is correct.

17:45:28 21 BY MR. CAVALIERE:

17:45:30 22 Q. So, Mr. Oldner, when you have a chance, and
17:45:34 23 when you're ready, Mr. Kurland can scroll down for
17:45:38 24 you. Have you seen this --

17:45:38 25 A. Yes, I have seen this document.

17:45:40 1 MR. POLLOCK: Let Mr. Cavaliere
17:45:42 2 finish.

17:45:43 3 THE WITNESS: I'm sorry.

17:45:45 4 MR. POLLOCK: Are you asking about a
17:45:46 5 308 page PDF?

17:45:49 6 MR. CAVALIERE: I'm asking about --
17:45:50 7 you asked me to present to you a copy of
17:45:52 8 the petition that I was talking about
17:45:55 9 relating to the Trump Group.

17:45:57 10 So I knew that -- I'm not asking about
17:45:59 11 a review of 300 pages. I happened to know
17:46:03 12 it was attached to this group of claim, and
17:46:05 13 it's only, I think, like, 10 pages, 12
17:46:09 14 pages long. So it's pages 7 to -- what is
17:46:19 15 it, 7 to 22.

17:46:25 16 BY MR. CAVALIERE:

17:46:58 17 Q. So, Mr. Oldner, are you, are you familiar with
17:47:00 18 this document?

17:47:34 19 A. I have seen this document.

17:47:04 20 Q. Okay. And, and what do you understand is being
17:47:09 21 sought as relief in this document?

17:47:13 22 MR. POLLOCK: Mr. Cavaliere, to the
17:47:14 23 extent that you're asking him to
17:47:16 24 characterize a 22-page legal document, I
17:47:19 25 object to the question. You're just

17:47:21 1 badgering the witness at this point.

17:47:23 2 MR. CAVALIERE: I'm not badgering the
17:47:23 3 witness at all. I'm asking him -- he's the
17:47:26 4 trustee of the Orly Genger Trust, and his
17:47:32 5 knowledge as to actions in which he is now
17:47:36 6 a party is important.

17:47:38 7 So I'm asking him his understanding
17:47:40 8 of, of the relief requested in this
17:47:42 9 petition.

17:47:45 10 BY MR. CAVALIERE:

17:47:45 11 Q. Can you please answer the question, Mr. Oldner?
17:47:47 12 If you don't know, then just say you don't know.

17:47:51 13 MR. POLLOCK: Mr. Cavaliere, his
17:47:53 14 knowledge of legal documents is
17:47:54 15 inextricably linked up with advice of
17:47:59 16 counsel.

17:47:59 17 It directly elicits privileged
17:48:02 18 communications and, frankly, we're well
17:48:05 19 past seven hours, and now you're asking him
17:48:07 20 about a document that's two years old that
17:48:10 21 is 22 pages long, and you're asking him to
17:48:16 22 explain what's there and what it means?

17:48:18 23 Furthermore, it appears that what
17:48:21 24 you're actually doing is seeking discovery
17:48:23 25 with respect to the removed actions.

17:48:25 1 Please move along.

17:48:28 2 MR. CAVALIERE: That's, that's not
17:48:29 3 what I'm doing, and I, and I assume you're
17:48:33 4 not going to allow Mr. Oldner to answer the
17:48:36 5 question, so.

17:48:37 6 MR. POLLOCK: I don't --

17:48:38 7 MR. CAVALIERE: I'll ask the following
17:48:39 8 question.

17:48:40 9 MR. POLLOCK: I don't know if
17:48:41 10 Mr. Oldner can characterize for us today a
17:48:44 11 22-page legal document, nor do I think that
17:48:47 12 is an appropriate question to be asking a
17:48:50 13 lay witness.

17:48:51 14 BY MR. CAVALIERE:

17:48:55 15 Q. Mr. Oldner, in your capacity as a, as a trustee
17:48:59 16 of the Orly Genger Trust, to the extent that you can
17:49:04 17 limit the indemnification cost of the Trump Group, do
17:49:11 18 you believe that you have an obligation to do so?

17:49:16 19 MR. POLLOCK: Objection.

17:49:18 20 Q. Please answer the question.

17:49:26 21 A. May I rephrase the question to make sure I am
17:49:29 22 answering the right one?

17:49:31 23 MR. POLLOCK: Actually, Rocco could
17:49:33 24 rephrase it.

17:49:34 25 A. Could you rephrase it, please?

17:49:38 1 Q. Do you believe that you have an obligation to
17:49:42 2 attempt to limit the indemnification costs that are
17:49:49 3 being accrued potentially by the Trump Group in
17:49:53 4 contention with the Trump notes?

17:49:56 5 MR. POLLOCK: Objection.

17:49:59 6 Q. You can answer.

17:50:01 7 A. I would prefer to limit any lessening of the
17:50:06 8 value of those notes, and --

17:50:10 9 Q. Thank you.

17:50:11 10 A. You're welcome.

17:50:42 11 Q. Okay. I'm sorry I cut you off. Did you have
17:50:15 12 anything else that you wanted to add?

17:50:17 13 A. No. I, I --

17:50:18 14 Q. Okay. If the opportunity presents, if the
17:50:21 15 opportunity presented itself in which, in which the
17:50:24 16 Orly Genger Trust would dismiss with prejudice its
17:50:30 17 petition against the Trump Group, such that the
17:50:33 18 monies that are due on the Trump notes would be paid
17:50:36 19 into an escrow account pending further court
17:50:39 20 determination, is that something that you would
17:50:42 21 consider in your capacity as trustee of the Orly
17:50:44 22 Genger Trust?

17:50:45 23 MR. POLLOCK: Mr. Cavaliere, I
17:50:46 24 continue to object to this line of
17:50:48 25 questioning. It is not relevant to the

17:50:51 1 Motion to Dismiss, and --

17:50:52 2 MR. CAVALIERE: It's most relevant.

17:50:52 3 MR. POLLOCK: -- it's --

17:50:52 4 MR. CAVALIERE: It's most relevant.

17:50:56 5 It's most relevant. It's the trust's --

17:50:57 6 it's the Chapter 7 Trustee's assertion that

17:51:03 7 this is property of the bankruptcy estate,

17:51:03 8 and that property is being depleted because

17:51:07 9 of Dalia Genger's petition, which is now

17:51:11 10 Mr. Oldner's petition, and it's covers

17:51:12 11 property estate, which is governed under

17:51:17 12 Section 541 of the code; okay?

17:51:19 13 And there's numerous, numerous

17:51:20 14 references in the Motion to Dismiss about

17:51:23 15 the \$32.3 million, and how that should

17:51:26 16 handle, and there's a number of other

17:51:28 17 reasons why it's relevant.

17:51:29 18 So I would appreciate if Mr. Oldner

17:51:31 19 can answer the question. It's my last

17:51:34 20 question.

17:51:35 21 And then Mr. Dellaportas, if he's

17:51:36 22 still on, can ask, ask his questions, and

17:51:36 23 anyone else can ask questions, to the

17:51:42 24 extent time permits.

17:51:43 25 MR. POLLOCK: Let me clarify. You're

17:51:43 1 asking him if he would consider limiting --
17:51:46 2 I, I don't understand the question, and I'm
17:51:50 3 not sure that he understands your question.

17:53:42 4 MR. CAVALIERE: Okay. So why don't we
17:51:53 5 have -- I thought, I thought it was an
17:51:55 6 excellent question. Why don't we have the
17:51:58 7 reporter read back the question, and then
17:52:00 8 we can determine whether Mr. Oldner
17:52:02 9 understands it.

17:52:03 10 (Court reporter read back the question.)

17:53:15 11 MR. POLLOCK: Objection to form and
17:53:17 12 many other objections.

17:53:18 13 BY MR. CAVALIERE:

17:53:22 14 Q. Do you understand the question, Mr. Oldner?

17:54:03 15 A. Not actually.

17:54:06 16 Q. Okay. If the, if the Trump -- if you had an
17:53:31 17 opportunity to limit the indemnification costs by
17:53:40 18 exchanging releases with the Trump Group, or
17:53:45 19 withdrawing that petition, would you consider doing
17:53:49 20 so, as long as you're rights are preserved with the
17:53:53 21 monies to be paid into an escrow account of an
17:53:57 22 independent party?

17:54:00 23 A. As long as my rights were preserved to the
17:54:03 24 \$32.3 million?

17:54:06 25 Q. That's correct.

17:54:07 1 A. I would, I would definitely need to discuss
17:54:11 2 that with my attorneys, so it would be something that
17:54:14 3 I would talk over with my attorney.

17:54:19 4 Q. Okay.

17:54:20 5 MR. CAVALIERE: I don't have, I don't
17:54:22 6 have any other further questions at this
17:54:25 7 time.

17:54:25 8 As I said earlier, I reserve the right
17:54:28 9 to request that this, you know, ask
17:54:34 10 additional questions at a later date as we
17:54:36 11 receive additional documents that we have
17:54:40 12 been requesting.

17:54:43 13 MR. POLLOCK: Thank you. Mr.
17:54:45 14 Dellaportas, did you have -- Mr.
17:54:45 15 Dellaportas, are you still here, and did
17:54:47 16 you have additional questions for the
17:54:48 17 witness? But please be considerate of the
17:54:52 18 extremely long day that he has already been
17:54:54 19 subjected to.

17:55:38 20 MR. GENDER: I believe that John had
17:55:38 21 to log off for something else. This is
17:55:07 22 Sagi Genger speaking.

17:55:08 23 MR. POLLOCK: I'm sorry. Can you
17:55:09 24 repeat what you said?

17:55:11 25 MR. GENDER: I said this is Sagi

17:55:12 1 Genger speaking. I believe my counsel, Mr.
17:55:16 2 Dellaportas, had to leave for something
17:55:18 3 else, and to the extent that his are the
17:55:19 4 only questions remaining, I think that
17:55:23 5 we'll waive our right to questions.

17:55:26 6 MR. POLLOCK: All right. Then we're
17:55:26 7 done for the day. Thank you, Mr. Oldner,
17:55:26 8 for your patience today.

17:55:26 9 And extreme thank you to our
17:55:26 10 stenographer, who has been tremendously
17:55:26 11 patient over the course of this deposition,
17:55:26 12 and waved her arms around the best that she
17:55:26 13 could --

17:55:28 14 MR. BOWEN: You can stop speaking,
17:55:28 15 that would be appreciated by the reporter.
17:55:28 16 We're off the record everyone.

17:55:50 17 (The deposition was concluded at 5:55 p.m.)

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WITNESS' SIGNATURE

I, MICHAEL OLDNER, hereby certify that I

have thoroughly read the transcript of my deposition
taken on the 25th day of June, 2020, and that said
transcript and corrections, if any, that appear on
the attached errata sheet, are a true and accurate
accounting of my testimony given on that day.

WITNESS

DATE

STATE OF)
) ss.
COUNTY OF)

SUBSCRIBED AND SWORN TO before me, a Notary
Public in and for the aforesaid county and state on
this, the ____ day of _____, 2020.

Notary Public

My Commission Expires:

17:55:52 1 ERRATA SHEET

17:55:52 2 If there are any corrections to your
17:55:52 3 deposition, indicate them on this sheet of paper,
17:55:52 4 giving the change, page number, line number, and
17:55:52 5 reason for the change.

17:55:52 6 The reasons for making changes are:

17:55:52 7 (1) To clarify the record;

17:55:52 8 (2) To conform to the facts; or

17:55:52 9 (3) To correct major transcription errors.

17:55:52 10 Page number ____ Line Number ____ Reason for change ____

17:55:52 11 Change _____ to _____

17:55:52 12 Page number ____ Line Number ____ Reason for change ____

17:55:52 13 Change _____ to _____

17:55:52 14 Page number ____ Line Number ____ Reason for change ____

17:55:52 15 Change _____ to _____

17:55:52 16 Page number ____ Line Number ____ Reason for change ____

17:55:52 17 Change _____ to _____

17:55:52 18 Page number ____ Line Number ____ Reason for change ____

17:55:52 19 Change _____ to _____

17:55:52 20 Page number ____ Line Number ____ Reason for change ____

17:55:52 21 Change _____ to _____

17:55:52 22 Page number ____ Line Number ____ Reason for change ____

17:55:52 23 Change _____ to _____

17:55:52 24 _____

17:55:52 25 SIGNATURE OF DEPONENT

17:55:52 1 COURT REPORTER'S CERTIFICATE

17:55:52 2 STATE OF ARKANSAS)
17:55:52) ss.
17:55:52 3 COUNTY OF SALINE)

17:55:52 4 I, JANESE FERGUSON SMITH, CCR, RPR, a
17:55:52 5 Notary Public in and for Saline County, Arkansas do
17:55:52 6 hereby certify that the facts stated by me in the
17:55:52 7 caption of the foregoing matter are true; and that
17:55:52 8 the foregoing matter was transcribed by me, to the
17:55:52 9 best of my ability and understanding, from my machine
17:55:52 10 shorthand notes taken at the time and place set out
17:55:52 11 in the caption hereto.

17:55:52 12 In accordance with Rule 30(e) of the Rules
17:55:52 13 of Civil Procedure, review of the transcript was
17:55:52 14 requested by the deponent or a party thereto.

17:55:52 15 I FURTHER CERTIFY that I am neither counsel
17:55:52 16 for, related to, nor employed by any of the parties
17:55:52 17 to the action in which this proceeding was taken;
17:55:52 18 and, further that I am not a relative or employee of
17:55:52 19 any attorney or counsel employed by the parties
17:55:52 20 hereto, not financially interested or otherwise, in
17:55:52 21 the outcome of this action.

17:55:52 22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on,
17:55:52 this, the 25th day of June, 2020.

17:55:52 23
17:55:52 24 _____
17:55:52 JANESE FERGUSON SMITH, CCR, RPR
17:55:52 Notary Public for Saline County
17:55:52 25 and Court Reporter.
17:55:52 Certificate Number 453